

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF YAMHILL

NEWBERG EDUCATION ASSOCIATION,
OEA/NEA, JENNIFER SCHNEIDER,
ANDREW GALLAGHER, KATHERINE
VILLALOBOS, AND SARA LINNERTZ,

Plaintiffs,

v.

NEWBERG SCHOOL DISTRICT, DAVID
BROWN, BRIAN SHANNON, RENEE
POWELL, AND TREVER DEHART,

Defendants.

No. 21CV42664

COMPLAINT

(ORS Chapter 28 – Declaratory
Judgment Act action for rights under
Article I, Sections 8 and 20 of Oregon
Constitution and 42 U.S.C. §1983
action for violations of First and
Fourteenth Amendments to the
United States Constitution)

ORS 21.135(1) (filing fee: \$281)

JURY TRIAL DEMANDED

Plaintiffs for their complaint allege as follows:

NATURE OF CLAIMS

1.

This is a complaint under ORS chapter 28 for declaratory and injunctive relief under the Oregon Constitution Article I, §§8 and 20 and under 42 U.S.C. § 1983 for violations of Plaintiffs’ free speech rights under both the Oregon and United States Constitutions, violations of state constitutional rights against arbitrary and unequal treatment, and violations of federal constitutional due process and equal protection.

PARTIES

2.

Plaintiff Newberg Education Association, OEA/NEA (“Association”) is a labor organization which represents licensed educators who work for defendant Newberg

1 School District. There are approximately 291 members in the Association bargaining unit.
2 The Association brings this action on behalf of itself and its membership.

3 3.

4 Individual Plaintiffs Jennifer Schneider, Andrew Gallagher, Katherine Villalobos,
5 and Sara Linnertz are all teachers or licensed specialists employed by defendant Newberg
6 School District and are members of the Association. Plaintiffs Schneider and Gallagher are
7 also respectively the President and Vice President of the Association. The individual
8 Plaintiffs are all citizens of the State of Oregon and Yamhill County.

9 4.

10 Defendant Newberg School District ("District") is a public school district organized
11 and existing under the laws of the state of Oregon. The District is in Yamhill County. The
12 governing body of the district is an elected school board ("District Board").

13 5.

14 Defendants David Brown, Brian Shannon, Renee Powell, and Trever DeHart
15 (referred to collectively as "Board Members") are all members of the District Board who
16 personally participated in the adoption of the resolution at issue in this case. They are
17 residents of Yamhill County and the State of Oregon.

18 STATEMENT OF FACTS

19 6.

20 In May of 2020, the killing of George Floyd by police, caught on video, sparked
21 outrage throughout the country, prompting many, despite the COVID-19 pandemic, to
22 take to the streets in protest and to issue public statements both acknowledging the harm
23 caused by systemic racism and calling for the education necessary to combat racism in all
24 its forms. Statements acknowledging the public importance of the issue were published

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not just by private corporate entities, but also by public agencies, including the Oregon Supreme Court.¹

7.

At its June 23, 2020, Board meeting, the Newberg School District Board also approved Resolution 2020-04, expressly noting that:

WHEREAS, the Newberg School board stands for social justice for our black and other marginalized communities in Newberg. Centuries of violence and oppression and the recent murders of George Floyd, Breonna Taylor, and Ahmaud Arbery have strengthened the need to promote reform in our system of education. We want to be part of the reform process, beginning with an honest discussion of systematic racial bias in our society; and

WHEREAS, As leaders of our Newberg School District and role models for young people, it is our charge to call out racism in all its forms and stand up against injustice especially in our public education system; and

WHEREAS, our Newberg students are not alone in living in fear of losing their lives because of the color of their skin; and

WHEREAS, Newberg School District shares a value of care and safety for all students regardless of race, ethnicity, economics, mobility, language, family status, gender, sexual orientation, gender identity, disability, initial proficiencies or religion.

Now, therefore be it resolved on this 23rd day of June 2020, by the Board of the Newberg School District, that, the district condemns racism, racial violence, white supremacy, hate speech, and bigotry in all forms inside and outside of our schools; and,

The district will work to be actively anti-racist and dismantle systemic racism in our schools and empower people of color by a thorough review of policies, practices, and district cultural norms; and,

The district affirms the value and importance of culturally responsive pedagogy and instructional practices, and of curriculum that represents the diversity of our community; and,

The district believes that having a diverse faculty and staff reflective of the demographics of our students provides significant value to students of color and all students and will continue to work towards a more diverse workforce.

¹ See https://www.osbar.org/_docs/resources/OSCMessages/reGeorgeFloyd.pdf

1 A copy of the Resolution 2020-04 is attached hereto as EXHIBIT 1 and is incorporated by
2 this reference.

3 8.

4 On or about September 18, 2020, in response to a student-led effort, the Oregon
5 Department of Education adopted the temporary rule, Every Student Belongs rule (OAR
6 581-022-2312), requiring that on or before January 1, 2021, every school district adopt a
7 policy that affirms that all students are entitled to a high quality educational experience,
8 free from discrimination or harassment based on perceived race, color, religion, gender
9 identity, sexual orientation, disability or national origin and all employees are entitled to
10 work in an environment that is free from discrimination or harassment. A copy of that
11 temporary rule is attached hereto as EXHIBIT 2 and is incorporated herein by this
12 reference.

13 9.

14 On or about October 15, 2020, the Oregon Department of Education also adopted a
15 Black Lives Matter resolution, and all the major organizations involved in the public
16 education system in Oregon issued a letter in support of the resolution affirming that
17 Black Lives Matter and that discrimination and injustice are intolerable in any form.
18 Signatories of the letter in support included: the Oregon State Board of Education, the
19 Oregon Department of Education (ODE), the Coalition of Oregon School Administrators
20 (COSA), the Oregon Education Association (OEA), the Oregon School Boards Association
21 (OSBA), the Oregon School Employees Association (OSEA), the Oregon School Activities
22 Association (OSAA), the Oregon Association of Education Service Districts (OAESD), and
23 the Oregon Association of Student Councils (OASC). Among other things, the letter in
24 support expressly noted that:

25 “Examining Black Lives Matter in a classroom context may generate
26 conversation. We are all education organizations, and we believe in the value
of authentic and respectful dialogue. We also condemn any call to harm or

1 harass anyone. The Oregon Department of Education has released resources
2 to help facilitate challenging conversations. If a conflict arises, we encourage
3 teachers, students, and parents to speak with their school administrator and
work together to resolve the issue.

4 We must be honest about our racist history as a state. We must acknowledge
5 the systemic racism that still exists in our public education system and the
6 harm that it causes. We must commit to an anti-racist stance and to do better
7 for Black students, families, and educators. It is our responsibility to make sure
that all students feel seen, safe, and welcome in our schools so that they can
fulfill their potential and achieve their goals, and we commit to partnering
with Black students and community to ensure that our systems change."

8 The letter included a link to resources² provided by the ODE to assist with authentic and
9 respectful dialogue on the issues. A copy of the ODE resolution and letter in support are
10 attached hereto as EXHIBITS 3 and 4 and incorporated herein by this reference.

11 10.

12 As an affiliate of the OEA, plaintiff Association also provided its members posters
13 affirming that Black Lives Matter produced by the OEA for use in the classroom. A copy
14 of the OEA produced Black Lives Matter poster is attached hereto as EXHIBIT 5 and is
15 incorporated by this reference.

16 11.

17 On or about December 8, 2020, the District Board adopted Policy ACB-All Students
18 Belong, which, among other things, provided that:

19 All students are entitled to a high quality educational experience, free from
20 discrimination or harassment based on perceived race, color, religion, gender
identity, sexual orientation, disability or national origin.

21 All employees are entitled to work in an environment that is free from
22 discrimination or harassment based on perceived race, color, religion, gender
identity, sexual orientation, disability or national origin

23 A copy of policy ACB-AR is attached hereto as EXHIBIT 6 and is incorporated by this
24 reference.

25
26 ² See <https://www.oregon.gov/ode/students-and-family/equity/SchoolSafety/Pages/EveryStudentBelongs.aspx>

12.

On or about February 19, 2021, the Oregon Department of Education adopted the final rule Every Student Belongs (OAR 581-022-2312), which included the same protections. A copy of that Resolution is attached hereto as EXHIBIT 7 and is incorporated herein by this reference.

13.

For the remainder of the 2020-2021 school year, members of the Association displayed BLM posters and Pride flags, and/or other paraphernalia without disruption to the education environment and in support of and in solidarity with fellow teachers and students who are Black and/or Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, Questioning ("LGBTQIA+).

14.

On or about July 13, 2021, newly-elected, Board members, individual defendants DeHart and Powell, took their oath of office, pursuant to ORS 332.005, affirming that, they would "support the Constitution of the United States, the constitution and laws of the state of Oregon, and the policies of the Newberg School District" and that, "During [their] term, they will honestly and impartially discharge the duties of the office of School Board Member to the best of my ability." They then joined existing Board members and individual defendants Shannon and Brown to form a majority to elect Brown as Chair of the Board and Shannon as Vice Chair. Shannon then moved to amend and reopen the discussion of the Agenda to "add discussions on BLM signs in District facilities, the Anti-Racism Resolution, and Policy ACB to tonight's agenda." His motion was tabled because the matters had not been properly noticed under the Public Meetings Law. A copy of the Minutes of the July 13, 2020, Board meeting are attached hereto as EXHIBIT 8, and incorporated herein by this reference.

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15.

On or about August 10, 2021, at the next District Board meeting, Board members and individual defendants Brown, Shannon, DeHart, and Powell voted to: “direct the Superintendent to remove all Black Lives Matter (a.k.a. BLM) signs, flags, placards, apparel, buttons, and all other modes of display, and all instances of the symbol known as the Pride flag from District facilities immediately, and direct the Policy Committee to draft policy language prohibiting the display of political signs, flags, apparel, buttons, and placards, and all other modes of display from District facilities, with the sole exception of the American flag and the Oregon state flag, with exemptions as it sees proper. The language contained in this directive shall only apply to District staff and faculty while in the performance of their official duties as District employees.” District Superintendent Joe Morelock indicated that he would need guidance from legal counsel before implementing the directive. A video of the meeting is available on YouTube at the following link:

<https://www.youtube.com/watch?v=3MNLfN1Kg3s>

16.

On or about August 23, 2021, counsel for plaintiff Association submitted a tort claims notice letter to Board Chair, defendant Brown and District Superintendent Morelock outlining the legal concerns regarding the Board’s August 10, 2020, directive and requesting that the Board rescind the directive. A copy of that Tort Claims Notice letter is attached as EXHIBIT 9.

17.

On or about August 24, 2021, the District Board held a meeting in executive session to consult with District legal counsel regarding the tort claims notice. During the executive session, Board members and individual defendants Brown, Shannon, DeHart, and Powell proposed to retain a second attorney in violation of the Public Meetings Law and over the objection and concerns expressed by other Board members. On information and belief, the

1 reason individual defendants wanted to retain a second attorney was because they did not
 2 like the legal advice the District received regarding the unconstitutionality of the August
 3 10, 2021, directive. A discussion regarding these events is included in the video of the
 4 Board's subsequent retreat meeting on August 24, 2021 available on YouTube at the
 5 following link: <https://youtu.be/q2Ky1y0Xt2s>

6 18.

7 On or about September 1, 2021, the District Board held another meeting to discuss
 8 whether to rescind its August 10, 2021, directive as requested by plaintiffs. Board members
 9 and individual defendants Brown, Shannon, DeHart, and Powell voted to table rescission
 10 of the directive. A video of that Board meeting is available on YouTube at the following
 11 link: <https://youtu.be/Bu4OdCLM1fE>

12 19.

13 On or about September 9, 2021, the District Policy Committee met and reviewed the
 14 policy materials attached as EXHIBIT 10 and incorporated herein by this reference.
 15 Defendants Shannon and DeHart, who comprise the majority on the Policy Committee,
 16 voted to present a policy consisting of Policy GBG Staff Participation in Political Activities
 17 as amended by Ensuring Safe Environments to Learn. A video of the Policy Committee
 18 meeting is available on YouTube at the following link: https://youtu.be/kbYuvOncR_g

19 20.

20 On or about September 9, 2021, District Mountainview Middle School Principal
 21 Terry McElligot ordered the school counselor in her building to take down the Pride Flag
 22 hanging in the Counseling Office. The next day, Principal McElligot held a staff meeting
 23 and questioned Association members about "t-shirts and flags" and told staff, "I don't
 24 want any of you telling students it's okay to be gay or trans. If you have a problem with
 25 this, you can come talk to me." Following the meeting Association members voiced
 26 concerns about their safety and fears that they may be targeted.

21.

On or about September 14, 2021, the District Board held a meeting to consider the Policy GBG with the amendment proposed by Defendants Shannon and Dehart. Three District Board members called for the District Board to rescind the August 10, 2021, directive. One District Board member moved to refer the issue to a District Superintendent standing committee to allow participation by staff and students in the creation of a policy that met their needs and concerns. Defendants Brown, Shannon, DeHart, and Powell voted against this motion to refer the policy to a Superintendent standing committee and against rescinding the August 10, 2021, directive immediately and instead voted to move forward with a second reading and adoption of the amended Policy GBG at the Board's meeting scheduled for September 28, 2021. A video of the Board meeting is available on YouTube at the following link: <https://youtu.be/Wj4uOzjQID4>.

22.

On September 16, 2021, the Oregon State Board of Education adopted a Resolution Encouraging Solidarity and Support for Student Identities. The resolution, among other things:

(9) Calls on the Newberg School Board to reverse course on its clear and continuous effort "...to remove all Black Lives Matter (aka BLM) signs, flags, and placards, apparel, buttons, and all other modes of display, and all instances of the symbol known as the Pride Flag from District facilities," and to validate that student identities are not inherently political or controversial, but welcomed and affirmed; and

(10) Further calls on the Newberg School Board to encourage district staff to celebrate and stand in solidarity with students through the use of signs, flags, placards and symbols, and affirm in words, policy and action that Every Student Belongs and is welcome, appreciated and ensured an equitable access to a high quality education in Newberg Public Schools regardless of race, color, religion, sex, sexual orientation, gender identity or expression, national origin, native language, immigration status, documentation status, marital status, age or disability.

A copy of that resolution is attached as EXHIBIT 11 and is incorporated herein by this reference.

23.

On September 22, 2021, at a public comment meeting representatives of Plaintiff Association made clear to the District Board that its members would be willing to work with the District through a Superintendent standing committee to help craft a policy that met the joint needs and concerns of the District, the staff, and students. A video of that Board meeting is available on YouTube at: <https://youtu.be/G6sLECUb3pg>.

24.

On September 28, 2021, the District Board met to vote on adoption of Policy GBG. The District Board finally voted to rescind the August 10, 2021, directive, but Defendants Brown, Shannon, DeHart, and Powell rejected a renewed motion to refer the policy to a Superintendent standing committee with participation of staff to address the needs and concerns of staff. Instead, Defendants Brown, Shannon, DeHart, and Powell voted to adopt Policy GBG over concerns expressed by three other District Board members and the Superintendent. A copy of Policy GBG is attached as EXHIBIT 12 and incorporated herein by this reference. A video of that Board meeting is available on YouTube at: <https://youtu.be/sSfs54GtULI>.

25.

The restrictions imposed upon the Association and its members, including the individual plaintiffs under the policy, are discriminatory and based on the content of their speech as “political,” “quasi-political,” or “controversial.” The District Superintendent and Board members in the minority acknowledged the lack of clarity of these terms and the difficulty they pose for purposes of enforcement by the administration at the Board’s meeting held on October 26, 2021. A video of that Board meeting is available on YouTube at: <https://www.youtube.com/watch?v=acBLA4uiTs8>. Defendant Board members in the majority expressly noted that their intent in adopting the policy was to “take out the Pride and the BLM because that’s been the big issue that we’ve been addressing all along.” To

1 date, the District Board has provided no further guidance to members. As a result of the
 2 District's original directive and new policy, plaintiffs have been chilled in the exercise of
 3 their constitutionally protected rights of free speech. They work under a constant fear that
 4 something that they are wearing or that they have displayed in their class such as a poster
 5 or a family picture or thought-provoking materials related to Gender Identity and Race,
 6 Sustainability and the Environment, Medical issues (including but not limited to COVID-
 7 19 protocols), Borders and Migration, Criminal Justice, Economic Justice, Privacy and
 8 Freedoms, Climate Change or other Science, the Holocaust, the Civil War, and Voting and
 9 Democracy might be deemed in violation of the policy, subjecting them to additional
 10 scrutiny and discipline by their building administrator, the Superintendent, and ultimately
 11 the School Board. The policy constitutes an unconstitutional prior restraint and is vague
 12 and overbroad.

13 26.

14 In the past, the District has allowed employees to wear political buttons, and
 15 display a variety of signs, etc. in the school without adverse impact. Defendants Brown,
 16 Shannon, DeHart, and Powell have indicated that the policy does not prohibit all posters
 17 and flags and symbols in the school but have demonstrated an unwillingness to articulate
 18 what is permissible under the policy. Such content-based restrictions on speech are illegal
 19 even when they masquerade as "time, place, and manner restrictions."

20 **FIRST CLAIM FOR RELIEF**
 21 **(Action for Declaratory Judgment under ORS chapter 28)**
 22 **(Article I, Section 8 – Oregon Constitution)**

23 27.

24 Plaintiffs reallege and incorporate by this reference paragraphs 1-26.

25 28.

26 This is a claim under ORS chapter 28 for a declaration of Plaintiffs' rights under
 Article I, Section 8 of the Oregon Constitution.

1 29.

2 A present and actual controversy exists between the parties in that Defendants
3 contend that the District's policy is constitutional, and Plaintiffs maintain that the policy
4 violates their rights under Article I, Section 8 of the Oregon Constitution.

5 30.

6 Plaintiffs are seeking a declaration that the District policy prohibiting plaintiff
7 Association members from "hang[ing], post[ing], erect[ing], or otherwise display[ing] any
8 posters, signs, flags, banners, pictures or other digital or physical image that depicts
9 support or opposition relating to a political, quasi-political, or controversial topic,"
10 violates plaintiffs' free expression guarantees under Article I, Section 8 of the Oregon
11 Constitution. On their face, the policy unreasonably discriminates against plaintiffs on the
12 basis of the content of their speech, prohibits free expression on public property, and the
13 prohibition is not permitted by any historical exception. Further, the policy is
14 unconstitutionally overbroad. It prohibits expression which would not cause any of the
15 alleged effects sought to be avoided by defendants and includes speech related to BLM
16 and Pride which finds support among all the organizations responsible for educating
17 students in the state of Oregon, including the ODE. To plaintiffs' belief and knowledge,
18 the District has allowed other forms of posters and flags as well as other forms of political
19 speech such as buttons and apparel without negative impact in the past.

20 31.

21 Plaintiffs by virtue of defendants' violation of their state constitutional rights, are
22 further entitled to injunctive relief that would prevent defendants from promulgating or
23 enforcing the unconstitutional directives or policies now or in the future.

24 32.

25 Plaintiffs have been required to retain attorneys to prosecute this action not only for
26 themselves but for their fellow citizens and members of the Association. Plaintiffs should

1 recover their costs and reasonable attorney fees pursuant to ORS 28.080, ORS 28.100, and
2 the rules for recovery of attorney fees expressed in *Deras v. Myers*, 272 Or. 47, 535 P.2d 541,
3 550 (1975.)

4 **SECOND CLAIM FOR RELIEF**
5 **(Action for Declaratory Judgment under ORS chapter 28)**
6 **(Article I, Section 20 – Oregon Constitution)**

7 33.

8 Plaintiffs reallege and incorporate by this reference paragraphs 1-26.

9 34.

10 This is a claim under ORS chapter 28 for a declaration of Plaintiffs' rights under
11 Article I, Section 20 of the Oregon Constitution.

12 35.

13 A present and actual controversy exists between the parties in that Defendants
14 contend that the District's policy is constitutional, and Plaintiffs maintain that the policy
15 violates their rights under Article I, Section 20 of the Oregon Constitution.

16 36.

17 Plaintiffs seek a declaration that, the District policy prohibiting plaintiff Association
18 members from "hang[ing], post[ing], erect[ing], or otherwise display[ing] any posters,
19 signs, flags, banners, pictures or other digital or physical image that depicts support or
20 opposition relating to a political, quasi-political, or controversial topic," violates plaintiffs'
21 guarantees under Article I, Section 20 of the Oregon Constitution against vague laws that
22 confer unbridled discretion, because such discretion creates the potential for unequal
23 application of the law, and thus arbitrary or unequal treatment of individuals.

24 37.

25 Plaintiffs by virtue of defendants' violation of their state constitutional rights, are
26 further entitled to injunctive relief that would prevent defendants from promulgating or
enforcing the unconstitutional directives or policies now or in the future.

1 38.

2 Plaintiffs have been required to retain attorneys to prosecute this action not only for
3 themselves but for their fellow citizens and members of the Association. Plaintiffs should
4 recover their costs and reasonable attorney fees pursuant to ORS 28.080, ORS 28.100, and
5 the rules for recovery of attorney fees expressed in *Deras v. Myers*, 272 Or. 47, 535 P.2d
6 541, 550 (1975.)

7 **THIRD CLAIM FOR RELIEF**
8 **(42 U.S.C. §1983)**
9 **(First Amendment – United States Constitution)**

10 39.

11 Plaintiffs reallege and incorporate by this reference paragraphs 1-26.

12 40.

13 The District policy prohibiting plaintiff Association members from “hang[ing],
14 post[ing], erect[ing], or otherwise display[ing] any posters, signs, flags, banners, pictures
15 or other digital or physical image that depicts support or opposition relating to a political,
16 quasipolitical, or controversial topic,” is an unconstitutional regulation of plaintiffs’ rights
17 of free speech and free association as guaranteed by the First Amendment to the United
18 States Constitution.

19 41.

20 Defendants’ actions in pushing for enforcement of the policy unreasonably
21 discriminate against plaintiffs on the basis of the content of their speech. To plaintiffs’
22 belief and knowledge, the District has allowed other forms of posters and flags as well as
23 other forms of political speech such as buttons and apparel without negative impact on the
24 educational environment.

25 42.

26 Defendants and their agents acted under color or authority of state law. They knew
or should have known that their actions were unlawful under both the Oregon and

1 Federal Constitutions. Defendants were in receipt of a tort claims notice warning them of
2 the illegality of their actions.

3 43.

4 Enforcement of the directive will cause irreparable harm and injury to plaintiffs by
5 denying them the ability to exercise their federal constitutional rights and has already
6 unreasonably inhibited and chilled their attempts to exercise those rights.

7 44.

8 Plaintiffs by virtue of defendants' violation of their federal constitutional rights, are
9 entitled to declaratory and injunctive relief that would prevent defendants from
10 promulgating or enforcing the unconstitutional policy now or in the future; and to their
11 attorney fees under 42 U.S.C. §1988.

12 **FOURTH CLAIM FOR RELIEF**
13 **(42 U.S.C. §1983)**
(Fourteenth Amendment Due Process – United States Constitution)

14 45.

15 Plaintiffs reallege and incorporate by this reference paragraphs 1-26.

16 46.

17 The District policy prohibiting plaintiff Association members from "hang[ing],
18 post[ing], erect[ing], or otherwise display[ing] any posters, signs, flags, banners, pictures
19 or other digital or physical image that depicts support or opposition relating to a political,
20 quasi-political, or controversial topic," is vague and overbroad in its scope, leaving
21 Association members without guidance as to what speech is prohibited and potentially a
22 violation of District policy leading to potential discipline by the District and/or their
23 licensing through the Teacher Standards and Practices Commission ("TSPC") in violation
24 of the Fourteenth Amendment guarantee of due process of law.

25 ///

26 ///

1 47.

2 Defendants and their agents acted under color or authority of state law. They knew
3 or should have known that their actions were unlawful under both the Oregon and
4 Federal Constitutions. Defendants were in receipt of a tort claims notice warning them of
5 the illegality of their actions.

6 48.

7 Enforcement of the directive will cause irreparable harm and injury to plaintiffs by
8 denying them the ability to exercise their federal constitutional rights and has already
9 unreasonably inhibited and chilled their attempts to exercise those rights.

10 49.

11 Plaintiffs by virtue of defendants' violation of their federal constitutional rights, are
12 entitled to declaratory and injunctive relief that would prevent defendants from
13 promulgating or enforcing the unconstitutional policy now or in the future; and to their
14 attorney fees under 42 U.S.C. §1988.

15 **FIFTH CLAIM FOR RELIEF**

16 **(42 U.S.C. §1983)**

17 **(Fourteenth Amendment Equal Protection – United States Constitution)**

18 50.

19 Plaintiffs reallege and incorporate by this reference paragraphs 1-26.

20 51.

21 The District policy prohibiting plaintiff Association members from “hang[ing],
22 post[ing], erect[ing], or otherwise display[ing] any posters, signs, flags, banners, pictures
23 or other digital or physical image that depicts support or opposition relating to a political,
24 quasi-political, or controversial topic,” particularly as an outgrowth of the outright ban on
25 BLM posters and Pride flag, buttons, and apparel, evince a discriminatory intent to deny
26 Association members the equal protection guarantees of the Fourteenth Amendment to
the United States Constitution.

1 52.

2 Defendants and their agents acted under color or authority of state law. They knew
3 or should have known that their actions were unlawful under both the Oregon and
4 Federal Constitutions. Defendants were in receipt of a tort claims notice warning them of
5 the illegality of their actions.

6 53.

7 Enforcement of the directive will cause irreparable harm and injury to plaintiffs by
8 denying them the ability to exercise their federal constitutional rights and has already
9 unreasonably inhibited and chilled their attempts to exercise those rights during a civil
10 rights crisis.

11 54.

12 Plaintiffs by virtue of defendants' violation of their federal constitutional rights, are
13 entitled to declaratory and injunctive relief that would prevent defendants from
14 promulgating or enforcing the unconstitutional policy now or in the future; and to their
15 attorney fees under 42 U.S.C. §1988.

16 DEMAND FOR JURY TRIAL

17 55.

18 Plaintiffs hereby request a jury trial on all triable claims and issues herein.

19 PRAYER FOR RELIEF

20 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

21 1. A finding and declaration that the District policy prohibiting plaintiff
22 Association members from "hang[ing], post[ing], erect[ing], or otherwise display[ing] any
23 posters, signs, flags, banners, pictures or other digital or physical image that depicts
24 support or opposition relating to a political, quasi-political, or controversial topic,"
25 violates Article I, Sections 8 and 20 of the Oregon Constitution and the First Amendment

26 ///

1 and Due Process and Equal Protection Clauses of the Fourteenth Amendment of the
2 United States Constitution.

3 2. An order enjoining defendants from promulgating or enforcing
4 unconstitutional directives or policies that prohibit plaintiff Association members from
5 “hang[ing], post[ing], erect[ing], or otherwise display[ing] any posters, signs, flags,
6 banners, pictures or other digital or physical image that depicts support or opposition
7 relating to a political, quasi-political, or controversial topic.”

8 3. An award of costs and disbursements, expert witness fees and reasonable
9 attorney fees incurred herein;

10 4. Such other and further relief as the Court determines to be just and proper in
11 light of all the circumstances.

12 Dated this 3rd day of November, 2021.

13 s/ Aruna A. Masih

14 Aruna A. Masih, OSB 973241

15 aruna@bennetthartman.com

16 Margaret S. Olney, OSB No. 881359

17 margaret@bennetthartman.com

18 Of Attorneys for Plaintiff

19 Phone: (503) 227-4600
20
21
22
23
24
25
26

Resolution 2020-04

**A Resolution Of The Newberg School Board Of Directors Condemning Racism And
Committing To Being An Anti-Racist School District**

WHEREAS, the Newberg School board stands for social justice for our black and other marginalized communities in Newberg. Centuries of violence and oppression and the recent murders of George Floyd, Breonna Taylor, and Ahmaud Arbery have strengthened the need to promote reform in our system of education. We want to be part of the reform process, beginning with an honest discussion of systematic racial bias in our society; and

WHEREAS, As leaders of our Newberg School District and role models for young people, it is our charge to call out racism in all its forms and stand up against injustice especially in our public education system; and

WHEREAS, our Newberg students are not alone in living in fear of losing their lives because of the color of their skin; and

WHEREAS, Newberg School District shares a value of care and safety for all students regardless of race, ethnicity, economics, mobility, language, family status, gender, sexual orientation, gender identity, disability, initial proficiencies or religion.

Now, therefore be it resolved on this 23rd day of June 2020, by the Board of the Newberg School District, that, the district condemns racism, racial violence, white supremacy, hate speech, and bigotry in all forms inside and outside of our schools; and,

The district will work to be actively anti-racist and dismantle systemic racism in our schools and empower people of color by a thorough review of policies, practices, and district cultural norms; and,

The district affirms the value and importance of culturally responsive pedagogy and instructional practices, and of curriculum that represents the diversity of our community; and,

The district believes that having a diverse faculty and staff reflective of the demographics of our students provides significant value to students of color and all students and will continue to work towards a more diverse workforce.

ADOPTED this 23rd day of June, 2020

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

JEFF MORGAN
INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

ODE 36-2020

CHAPTER 581
OREGON DEPARTMENT OF EDUCATION

FILED

09/18/2020 8:26 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: All Students Belong

EFFECTIVE DATE: 09/18/2020 THROUGH 03/16/2021

AGENCY APPROVED DATE: 09/17/2020

CONTACT: Jeremy Wartz 255 Capitol St NE
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jeremy.wartz@state.or.us

Filed By:
Jeremy Wartz
Rules Coordinator

NEED FOR THE RULE(S):

The Department recognizes that student health and safety are the cornerstone of education and that all students are entitled to a high-quality educational experience, free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability, or national origin, and without fear or hatred, racism or violence. All staff and leaders are also entitled to work in environments that are free from discrimination or harassment, and visitors should be able to participate in school activities without fear for their safety. The proposed rule is an important step in creating safe and inclusive school climates where all who participate in our school communities feel welcome.

JUSTIFICATION OF TEMPORARY FILING:

In July 2020, an Oregon high school student sent a letter to Governor Kate Brown asking for help. In the letter, the student stressed the importance of banning the Confederate flag in Oregon public schools. In response, Governor Brown wrote to the State Board of Education, urging members "to take immediate action to address and correct the adverse impacts symbols of hate and other manifestations of hate speech have on students in Oregon public schools." The presence of symbols of hate on the basis of race, color, religion, gender identity, sexual orientation, disability or national origin causes harm, and significantly disrupts the operation of schools. Oregon's students who are Black, Indigenous, People of Color, members of Tribal communities and Tribes, and members of LGBTQ2SIA+ communities are known to be disproportionately targeted by acts of bias and hate. Failure to take immediate rulemaking action allows the presence of a swastika, noose, or confederate flag, as well as any bias incidents, to be handled by school districts, public charter schools, and education service districts under currently existing policies and procedures; there would be no uniform statewide standard for addressing these incidents. Incidents of bias and racism contribute to the myriad educational inequities that students who are Black, Indigenous, People of Color, members of Tribal communities and Tribes, and members of LGBTQ2SIA+ communities face on a continuous basis. A statewide ban of these symbols is necessary to ensure that all of Oregon's students and staff can participate in, and fully benefit from, their educational experience.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

All relevant documents are readily available under the State Board of Education's website, BoardBook Premier, in the September 2020 meeting.

ADOPT: 581-022-2312

RULE TITLE: All Students Belong

RULE SUMMARY: The proposed temporary All Students Belong Rule, prioritizes student health and safety by (1) prohibiting the presence or use of the swastika, noose, or confederate flag on school grounds or in any program, service, school or activity financed in whole or in part by moneys appropriated by the Legislative Assembly; (2) requiring school districts, public charter schools, and education service districts to adopt policies prohibiting the use or display of those symbols; and (3) requiring school districts, public charter schools, and education service districts to develop procedures for addressing bias incidents.

RULE TEXT:

(1) It is the policy of the State Board of Education that all students, employees, and visitors in public schools are entitled to learn, work, and participate in an environment that is safe and free from discrimination, harassment, and intimidation.

(2) The Oregon Legislature has determined that a person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.

(3) The presence of symbols of hate on the basis of race, color, religion, gender identity, sexual orientation, disability or national origin including the noose, swastika, or confederate flag create a material and substantial disruption in school activities and the learning environment by creating an atmosphere of fear and intimidation and interfere with the rights of students by denying them full access to the services, activities, and opportunities offered by a school.

(4) Definitions. For purposes of these rules:

(a) "Bias Incident" means a person's hostile expression of animus toward another person, relating to the other person's perceived race, color, religion, gender identity, sexual orientation, disability or national origin, of which criminal investigation or prosecution is impossible or inappropriate. Bias Incidents may include derogatory language or behavior directed at or about any of the preceding demographic groups.

(b) "Symbol of Hate" means a symbol, image, or object that expresses animus on the basis of race, color, religion, gender identity, sexual orientation, disability or nation origin including the noose, swastika, or confederate flag, and whose display:

(A) Is reasonably likely to cause a substantial disruption of or material interference with school activities, or

(B) Is reasonably likely to interfere with the rights of students by denying them full access to the services, activities, and opportunities offered by a school.

(5) School districts, public charter schools, the Oregon School for the Deaf, Education Service Districts, Youth Corrections Education Program providers under contract with the Oregon Department of Education, Juvenile Detention Education Program providers under contract with the Oregon Department of Education, or a program that receives money pursuant to ORS 343.243, must prohibit the use or display of any noose, swastika, or confederate flag on school grounds or in any program, service, school or activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly except where used in teaching curriculum that is aligned the Oregon State Standards.

(6) On or before January 1, 2021, school districts, public charter schools, the Oregon School for the Deaf, and Education Service Districts must adopt a policy that:

(a) Affirms all students are entitled to a high quality educational experience, free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability or national origin;

EX 2, Page 2 of 3

- (b) Affirms all employees are entitled to work in an environment that is free from discrimination or harassment;
- (c) Affirms all visitors are entitled to participate in an environment that is free from discrimination or harassment;
- (d) Prohibits the use or display of any symbols of hate, including at a minimum the noose, swastika, or confederate flag, on school grounds or in any program, service, school or activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly except where used in teaching curriculum that is aligned the Oregon State Standards; and
- (e) Establishes procedures for addressing bias incidents. The procedures must:
 - (A) Define persons impacted broadly to include individuals at whom an incident was directed as well as students in the larger school community likely to be impacted by the incident;
 - (B) Require responding staff to prioritize the safety and well-being of all persons impacted;
 - (C) Require responding staff to recognize the experience of all persons impacted, acknowledge the impact, commit to taking immediate action, and prevent further harm against those person impacted from taking place;
 - (D) Include in any redirection procedures educational components that address the history and impact of hate as well as procedural components to ensure the safety, healing, and agency of those impacted by hate, accountability and transformation for people who cause harm as well as transformation of the conditions that perpetuated the harm;
 - (E) Include communication protocols that provide all persons impacted with information relating to the investigation and outcome of the investigation. At a minimum, the information provided must include:
 - (i) That an investigation has been initiated;
 - (ii) When an investigation has been completed;
 - (iii) The findings of the investigation and the final determination based on those findings;
 - (iv) Actions taken with the person or persons who committed the harassing behavior to remedy behavior and prevent reoccurrence when the action relate directly to a person impacted by the event; and
 - (v) If any of the information in sections (i) through (iv) cannot be shared, a citation to the law prohibiting release and an explanation of how that law applies to the current situation.
 - (F) Direct administrators and school personnel to consider whether the behavior also implicates other civil rights laws and, if so, to respond accordingly. The nature of the conduct must determine the process used, the rights and protections available to persons impacted, and the right to appeal to the Oregon Department of Education or the United States Department of Education Office of Civil Rights; and
 - (G) Require administrators to develop and implement instructional materials to make this policy and related practices including reporting procedures, educational processes, and possible consequences known to all school employees and students.

STATUTORY/OTHER AUTHORITY: ORS 326.051, ORS 659.850

STATUTES/OTHER IMPLEMENTED: ORS 659.850



Black Lives Matter Resolution

October 15, 2020

WHEREAS, Black Lives Matter; and

WHEREAS, the Oregon State Board of Education is charged by students to continue the real work of repairing the damage of racial injustice, brutality, and hatred by bringing messages of understanding, love, and belonging more fully to our schools throughout Oregon; and

WHEREAS, the State Board of Education's mission is to provide leadership and vision for Oregon's schools and districts by enacting equitable policies and promoting educational practices that lead directly to the educational and life success of all Oregon PK -12 students; and

WHEREAS, the State Board of Education promotes nondiscrimination and an environment free of harassment based on an individual's race, color, religion, sex, sexual orientation, gender identity or expression, national origin, marital status, age or disability; and

WHEREAS, public schools and school districts in Oregon are subject to all federal and state laws and constitutional provisions prohibiting discrimination; and

WHEREAS, the State Board of Education is committed to ensuring in words and actions that every student has access to the resources and supports they need to thrive in school; and

WHEREAS, Oregon state law requires school districts to provide a free appropriate education to all children between the ages of 5 and 19 who reside within the district (ORS 339.115); and

WHEREAS, the State Board of Education has directed all Oregon school districts, public charter schools, and education service districts review and, where necessary, strengthen relevant policies, procedures, and practices, including those related to addressing racial bias incidents, with attention to non-punitive, remedial approaches (OAR 581-022-2312); and

WHEREAS, the U.S. Office of Special Counsel issued an [advisory opinion](#) that it is not a violation of the Hatch Act for federal employees to show support for the Black Lives Matter movement and the Black Lives Matter Global Network while on duty, including wearing or displaying materials related to the cause, because they address issues such as racism, which are not inherently aligned with a single political party and do not meet any criteria for a "partisan political group"; and

WHEREAS, we strongly support the declaration that "Black Lives Matter" in the findings sections of several bills enrolled by Oregon's bipartisan Legislature ([HB 4203](#), [HB 4205](#), [HB4207](#)); and

WHEREAS, we acknowledge that throughout Oregon’s history, institutional and structural racism have caused division and fear for our communities, and that we share in the responsibility to respond to these circumstances on behalf of all Oregon school districts, educational professionals, students and families;

WHEREAS, we acknowledge that the authors of Oregon’s constitution declared that no Black people could reside in the state or hold real estate, a law that wasn’t repealed until 1926; and that racist language in the state constitution wasn't removed until 2002, all of these causing lasting negative consequences for Black communities; and

WHEREAS, we acknowledge that across the U.S. Black students are more heavily disciplined and referred to law enforcement than White students, as well as other [critical inequalities](#) that schools will continue to perpetuate without proactive implementation of anti-racist policy and practice ([EdWeek, 2017](#)); and

WHEREAS, an undeniable series of tragic events and crises have unfolded in Oregon and around the U.S., including the COVID-19 pandemic, wildfires, and violence driven by systemic racism that have stacked harm upon harm against Black, Indigenous, Native American, people of color, tribal communities, and tribal governments; and

WHEREAS, we cannot legislate away racism but we can help bring it to light; and

WHEREAS, in believing that silence and inaction allow racism to remain prevalent in our schools, we declare that “Black Lives Matter” in order to reinforce that the lives of Black educators, staff, students, and everyone in school communities are just as valuable as anyone else’s life; and that Black students matter and belong in our classrooms, just like all other students;

THEREFORE BE IT RESOLVED that the Oregon State Board of Education:

- (1) Renews its commitment to anti-racism, equity, and access to education as a core value, manifested by a steadfast commitment to creating a welcoming environment for all students and families and direction of the supports and resources needed to eliminate barriers and promote student success; and
- (2) Urgently requests that all Oregon school districts, public charter schools, and education service districts affirm that “Black Lives Matter” by striving to make space in classrooms and within the school community for dialogue and support for issues of race and equity; and
- (3) Urgently requests that Oregon school districts, public charter schools, and education service districts support educators and others who are making a special effort to let Black students and families know that they belong and are valued members of the school community; and
- (4) Urgently requests that Oregon school districts, public charter schools, and education service districts communicate to students, families, employees, and their communities their policies and

practices and their commitment to providing all students with a high quality public education regardless of race; and

(5) Urgently requests that Oregon school districts, public charter schools, and education service districts consult with local and state community partners to develop, implement, and/or strengthen comprehensive networks of support for students and families who are experiencing increased harassment, violence, bullying, or hatred based on race; and

(6) Urgently requests that Oregon school districts, public charter schools, and education service districts validate that “Black Lives Matter” through resolutions consistent with this Resolution; and

(7) Commits to supporting efforts by the Oregon Department of Education, Oregon school districts, public charter schools, charter schools, education service districts, and educational leaders to create and nurture an inclusive and welcoming environment for all students, families, and employees in which All Students Belong.



October 15, 2020

Dear education partners and community members,

The co-signers of this letter represent the leaders of the Oregon State Board of Education, the Oregon Department of Education (ODE), the Coalition of Oregon School Administrators (COSA), the Oregon Education Association (OEA), the Oregon School Boards Association (OSBA), the Oregon School Employees Association (OSEA), the Oregon School Activities Association (OSAA), the Oregon Association of Education Service Districts (OAESD), and the Oregon Association of Student Councils (OASC). Each of our organizations has been clear about our shared commitment to advancing a racially just future. We each have policies and procedures against discrimination, harassment, and bullying. We are committed to ensuring that all students in Oregon feel safe, welcome, and included in our schools and activities. As part of that commitment, we unequivocally affirm that Black Lives Matter and believe racial discrimination and injustice are intolerable in any form. This letter is a statement of our collective values and comes after reports of educators being harassed for displaying Black Lives Matter symbols.

We fully support Black Lives Matter as a civil rights movement that aims to combat racism and support Black individuals. We stand beside Black Lives Matter, as a statement of social justice and an affirmation of the value and worth of Black people. We can acknowledge that many people have misunderstood or been misinformed about the origin and expression that Black Lives Matter. The need to affirm the Black Lives Matter is rooted in the history and current experiences that have intentionally marginalized Black lives and bodies.

The Oregon State Board of Education recently adopted state rules that prohibit the display of hate symbols, including the noose, swastika, and confederate flag in school settings with the All Students Belong initiative. Black Lives Matter is the opposite of those prohibited symbols; it is a statement of love and acceptance, not a symbol of hate.

The display of the phrase "Black Lives Matter" or Black Lives Matter symbols in school settings does not violate any state policy or law. That being said, this letter does not constitute legal advice and we encourage school districts to consult with their legal counsel if questions around

state and federal law arise. To many educators, Black Lives Matter demonstrates to all of our students that racism has no place in our schools or society. It shows Black students that they matter in our classrooms. Calling attention to racism has a place in our schools because we know that systemic racism and bias continue to hurt students, families, and staff who are Black, Indigenous, Native American, and people of color. In Oregon, Black students are disproportionately impacted by suspension and expulsion, and they are less likely to graduate from high school. These facts do not align with our core values of excellence and equity in education. That is why we say that Black Lives Matter.

We understand that Black Lives Matter elicits many different points of view; Oregon is a large state with many voices. Our support for the Black Lives Matter movement, anti-racist training, and the teaching of the sometimes violent and racist history of the U.S. are not intended to generate guilt or shame for white students and communities. Little positive change can come from the negative space of guilt and shame. However, when we recognize that the current systems we live in are deeply rooted in history and were created to benefit some more than others, together we can take the necessary steps to rectify this long-standing injustice and dismantle systemic racism in our society.

Examining Black Lives Matter in a classroom context may generate conversation. We are all education organizations and we believe in the value of authentic and respectful dialogue. We also condemn any call to harm or harass anyone. The Oregon Department of Education has released [resources](#) to help facilitate challenging conversations. If a conflict arises, we encourage teachers, students, and parents to speak with their school administrator and work together to resolve the issue.

We must be honest about our [racist history as a state](#). We must acknowledge the systemic racism that still exists in our public education system and the harm that it causes. We must commit to an anti-racist stance and to doing better for Black students, families, and educators. It is our responsibility to make sure that all of our students feel seen, safe, and welcome in our schools so they can fulfill their potential and achieve their goals, and we commit to partnering with Black students and community to ensure that our systems change.

Sincerely,

Kimberly Howard
Chair, Oregon State Board of Education

Colt Gill
Director, Oregon Department of Education

Iton Udosenata
President, Coalition of Oregon School Administrators

Cynthia Richardson
President, COSA Equity Board

Craig Hawkins
Executive Director, Coalition of Oregon School Administrators

John Larson
President, Oregon Education Association

Jim Fotter
Executive Director, Oregon Education Association

Bill Graupp
President, Oregon School Board Members of Color Caucus

Jim Green
Executive Director, Oregon School Boards Association

Lisa Gourley
President, Oregon School Employees Association

Rick Shidaker
Executive Director, Oregon School Employees Association

Heidi Sipe
President, Oregon School Activities Association Executive Board

Peter Weber
Executive Director, Oregon School Activities Association

Gary Peterson
Executive Director, Oregon Association of Education Service Districts

Raymond Arias
President, Oregon Association of Student Councils

Ben Bowman
Board Chair, Oregon Association of Student Councils



BLACK STUDENTS

BLACK *dreams*

BLACK *FUTURES*

BLACK **LIVES**

MATTER!

Newberg School District 29J

Code: ACB
Adopted: 12/08/20
Orig. Code: ACB

All Students Belong

All students are entitled to a high quality educational experience, free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability or national origin.

All employees are entitled to work in an environment that is free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability or national origin.

All visitors are entitled to participate in an environment that is free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability or national origin.

“Bias incident” means a person’s hostile expression of animus toward another person, relating to the other person’s perceived race, color, religion, gender identity, sexual orientation, disability or national origin, of which criminal investigation or prosecution is impossible or inappropriate. Bias incidents may include derogatory language or behavior directed at or about any of the preceding demographic groups.

“Symbol of hate” means a symbol, image, or object that expresses animus on the basis of race, color, religion, gender identity, sexual orientation, disability or national origin including, the noose, swastika, or confederate flag¹, and whose display:

1. Is reasonably likely to cause a substantial disruption of or material interference with school activities; or
2. Is reasonably likely to interfere with the rights of students by denying them full access to the services, activities, and opportunities offered by a school.

The district prohibits the use or display of any symbols of hate on district grounds or in any district- or school-sponsored program, service, school or activity that is funded in whole or in part by monies appropriated by the Oregon Legislative Assembly, except where used in teaching curriculum that is aligned to the Oregon State Standards.

In responding to the use of any symbols of hate, the district will use non-disciplinary remedial action whenever appropriate.

The district prohibits retaliation against an individual because that person has filed a charge, testified, assisted or participated in an investigation, proceeding or hearing; and further prohibits anyone from coercing, intimidating, threatening or interfering with an individual for exercising any rights guaranteed under state and federal law.

¹ While commonly referred to as the “confederate flag,” the official name of the prohibited flag is the Battle Flag of the Armies of Northern Virginia.

Nothing in this policy is intended to interfere with the lawful use of district facilities pursuant to a lease or license.

The district will use administrative regulation ACB-AR - Bias Incident Complaint Procedure to process reports or complaints of bias incidents.

END OF POLICY

Legal Reference(s):

[ORS 659.850](#)
[ORS 659.852](#)

[OAR 581-002-0005](#)
[OAR 581-022-2312](#)

[OAR 581-022-2370](#)

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969).
Dariano v. Morgan Hill Unified Sch. Dist., 767 F.3d 764 (9th Cir. 2014).
State v. Robertson, 293 Or. 402 (1982).

Oregon Department of Education

Chapter 581

Division 22 STANDARDS FOR PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

581-022-2312 Every Student Belongs

- (1) It is the policy of the State Board of Education that all students, employees, and visitors in public schools are entitled to learn, work, and participate in an environment that is safe and free from discrimination, harassment, and intimidation.
- (2) The Oregon Legislature has determined that a person may not be subjected to discrimination in any public elementary or secondary education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.
- (3) The presence of symbols of hate on the basis of race, color, religion, gender identity, sexual orientation, disability or national origin including the noose, symbols of neo-Nazi ideology and the battle flag of the Confederacy create a material and substantial disruption in school activities and the learning environment by creating an atmosphere of fear and intimidation and interfere with the rights of students by denying them full access to the services, activities, and opportunities offered by a school.
- (4) Definitions. For purposes of these rules:
- (a) "Bias Incident" means a person's hostile expression of animus toward another person, relating to the other person's perceived race, color, religion, gender identity, sexual orientation, disability or national origin, of which criminal investigation or prosecution is impossible or inappropriate. Bias Incidents may include derogatory language or behavior directed at or about any of the preceding demographic groups.
- (b) "Symbol of Hate" means a symbol, image, or object that expresses animus on the basis of race, color, religion, gender identity, sexual orientation, disability or nation origin including the noose, symbols of neo-Nazi ideology and the battle flag of the Confederacy, and whose display:
- (A) Is reasonably likely to cause a substantial disruption of or material interference with school activities, or
- (B) Is reasonably likely to interfere with the rights of students by denying them full access to the services, activities, and opportunities offered by a school.
- (5) School districts, public charter schools, the Oregon School for the Deaf, Education Service Districts, Youth Corrections Education Program providers under contract with the Oregon Department of Education, Juvenile Detention Education Program providers under contract with the Oregon Department of Education, or a program that receives money pursuant to ORS 343.243, must prohibit the use or display of any noose, symbols of neo-Nazi ideology and the battle flag of the Confederacy on school grounds or in any program, service, school or activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly except where used in teaching curriculum that is aligned the Oregon State Standards.
- (6) On or before January 1, 2021, school districts, public charter schools, the Oregon School for the Deaf, and Education Service Districts must adopt a policy that:
- (a) Affirms all students are entitled to a high quality educational experience, free from discrimination or harassment

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- Access the Annual Compilation
- FAQ
- Rules Coordinator / Rules Writer Login

based on perceived race, color, religion, gender identity, sexual orientation, disability or national origin;

(b) Affirms all employees are entitled to work in an environment that is free from discrimination or harassment;

(c) Affirms all visitors are entitled to participate in an environment that is free from discrimination or harassment;

(d) Prohibits the use or display of any symbols of hate, including at a minimum the noose, symbols of neo-Nazi ideology and the battle flag of the Confederacy, on school grounds or in any program, service, school or activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly except where used in teaching curriculum that is aligned the Oregon State Standards; and

(e) Establishes procedures for addressing bias incidents. The procedures must:

(A) Define persons impacted broadly to include individuals at whom an incident was directed as well as students in the larger school community likely to be impacted by the incident;

(B) Require responding staff to prioritize the safety and well-being of all persons impacted;

(C) Require responding staff to recognize the experience of all persons impacted, acknowledge the impact, commit to taking immediate action, and prevent further harm against those person impacted from taking place;

(D) Include in any redirection procedures educational components that address the history and impact of hate as well as procedural components to ensure the safety, healing, and agency of those impacted by hate, accountability and transformation for people who cause harm as well as transformation of the conditions that perpetuated the harm;

(E) Include communication protocols that provide all persons impacted with information relating to the investigation.

(i) The information provided to the persons at whom the behavior was directed and the person who committed the behavior must include that an investigation has been initiated, actions taken to prevent reoccurrence, findings of the investigation and the final determination based on those findings, to the extent allowed under state and federal law, the actions taken with respect to the person who committed the behavior to remedy behavior and, when applicable, a citation to the law prohibiting release and an explanation of how that law applies to the current situation.

(ii) The information provided to students in the school community likely to be impacted by the incident must include that an investigation has been initiated and actions taken to prevent reoccurrence.

(F) Direct administrators and school personnel to consider whether the behavior also implicates other civil rights laws and, if so, to respond accordingly. The nature of the conduct must determine the process used, the rights and protections available to persons impacted, and the right to appeal to the Oregon Department of Education or the United States Department of Education Office of Civil Rights; and

(G) Require administrators to develop and implement instructional materials to make this policy and related practices including reporting procedures, educational processes, and possible consequences known to all school employees and students.

Statutory/Other Authority: ORS 326.051 & ORS 659.850

Statutes/Other Implemented: ORS 659.850

History:

[ODE 6-2021, adopt filed 02/19/2021, effective 02/19/2021](#)

[ODE 36-2020, temporary adopt filed 09/18/2020, effective 09/18/2020 through 03/16/2021](#)

[Please use this link to bookmark or link to this rule.](#)

v1.9.1

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NEWBERG SCHOOL DISTRICT 29J

Regular Board Meeting, July 13, 2021

Virtual via Zoom Session

MINUTES

BOARD MEMBERS PRESENT

Dave Brown
Trevor DeHart
Ines Peña
Brandy Penner
Rebecca Piros
Renee Powell
Brian Shannon

STAFF PRESENT

Dr. Joe Morelock, Superintendent
Dr. Derek Brown, Assistant Superintendent
Nikki Fowler, Director of Operations & Finance
Shanna Andres, Exec. Assistant to the
Superintendent
Ann Ziehl, Director of Special Programs
Gregg Koskela, Communications Coordinator
and Bond Manager
Shiloh Ficek, Director of Nutrition Services &
Transportation
Jennifer Nelson, Board Secretary

I. REGULAR SESSION CALL TO ORDER:

A duly called and noticed Regular Board Meeting of the Board of Directors of Newberg School District 29J was called to order by **Acting Chair Brandy Penner** at 7:00 pm on Tuesday, July 13, 2021 via Zoom Session. This video session was also recorded and posted.

II. FLAG SALUTE

Rebecca Piros led the Board in the Pledge of Allegiance.

III. REVIEW AGENDA

Acting Chair Penner reviewed the agenda. **Director Shannon** requested some amendments to agenda. **Acting Chair Penner** replied those items may be brought up at the end of the meeting under Future Agenda Items. **Director Shannon** stated he wished for the items to be included on this evening's agenda for discussion and will move to reopen the discussion after the new chair is elected.

IV. OATHS OF OFFICE

07min:08sec

Board members Renee Powell, Trevor DeHart, and Ines Peña took the Oaths of Office after being elected on May 18, 2021.

V. ELECT CHAIRPERSON

10min:30sec

ORS 332.040 Officers; term. No later than at the next regular meeting following July 1, the district school board shall meet and organize by electing a chairperson and a vice chairperson from its members. No member shall serve as chairperson for more than four years in succession.

Acting Chair Penner invited nominations for Board Chairperson.

- **Director Peña** nominated **Rebecca Piros**; she is willing to serve.
- **Director Shannon** nominated **Dave Brown**; he is willing to serve.

Acting Chair Penner closed the nominations for Board Chair.

Director Peña and **Acting Chair Penner** provided comments in support for Director Piros for Board Chair.

Director Piros offered her own comments about what she would bring to the Board as Chair.

Director Shannon called a point of order and said the Board is not to be campaigning during the voting. He provided comments in support for Director Brown for Board Chair.

Acting Chair Penner provided comments for why she did not believe Director Brown was suited to serve as Chair. **Director Shannon** interrupted to call the question and end debate. He stated the entire demonstration was out of order and moved the question. The move to question failed for lack of recognition by the Chair and lack of a second to prompt a required two-thirds majority vote for adoption to close debate.

MOTION 1: To elect nominee **Rebecca Piros** as the Newberg School District Board of Directors Board Chairperson for 2021-22 school year.

Motion passed: 3 Yes [Penner, Peña, Piros]- 4 No [Brown, DeHart, Powell, Shannon]

MOTION 2: To elect nominee **Dave Brown** as the Newberg School District Board of Directors Board Chairperson for 2021-22 school year

Motion passed: 4 Yes [Brown, DeHart, Powell, Shannon]- 3 No [Penner, Peña, Piros]

Chair Brown assumed his new role as Board Chair, commented on the interesting transition, and offered thanks to Director Penner for her service as Chair. He spoke of change, the need for civility, correcting divisiveness in the community and on the Board, and setting aside politics and focus on education for every single student. He spoke of working together with Director Piros to focus on the people. He congratulated the new members and re-elected members sworn in tonight and thanked previous Board members Ron Mock and Bob Woodruff for their years of service.

VI. ELECT VICE-CHAIRPERSON

29min:28sec

Board Chair Brown invited nominations for Board Vice-Chairperson.

- **Director Renee Powell** nominated **Brian Shannon**; he accepted.
- **Director Penner** nominated **Rebecca Piros**; she accepted.

Chair Brown asked if there were any other nominations and hearing none he invited Director Powell to provide comments regarding her nomination.

Director Powell questioned on the professionalism of the comments during the Chair election and said they weren't very nice and she hoped that the Board can move forward and pull together to represent our students. She said she read all the emails in support of Director Piros and Director Brown and that helped her make her decision, stating there were around 54 for Director Brown and 31 for Director Piros (see official meeting record for referenced emails). She wished to ensure she was listening to the majority of the community would want for our Board and schools.

Director Shannon called a point of order stating his belief that the Board is not to be doing speeches about nominations, they are only to nominate and vote. **Chair Brown** said he would continue as they have tonight and allow Director Penner to speak about her nomination of Director Piros.

Director Penner provided comments in support for Director Piros for Board Vice-Chair, noting she would create a balanced chair team and bridge contention on the Board.

MOTION 3: To elect nominee **Brian Shannon** as the Newberg School District Board of Directors Board Vice-Chairperson for 2021-22 school year

Motion passed: 4 Yes [Brown, DeHart, Powell, Shannon]- 3 No [Penner, Peña, Piros]

III. REVIEW AGENDA (continued)

33min:42sec

MOTION 4: **Brian Shannon/Renee Powell** moved that Board reopen the discussion of the Agenda.

Vice-Chair Shannon cited policy on meeting agendas and said a list of items was sent to the former chair last week and none of the items made it on the agenda despite the language that any board member or community member can ask to have items added to the agenda (see District's website for the complete [policy](#)).

MOTION 5: **Brian Shannon** moved to amend the motion to reopen the discussion of the Agenda and add discussions on BLM signs in District facilities, the Anti-Racism Resolution, and Policy ACB to tonight's agenda.

Director Piros asked if he wants the Board to discuss these items in tonight's meeting without any preparation. **Vice-Chair Shannon** replied she could ask Director Penner why it was not placed on the agenda. **Director Piros** added that the agenda needs to be noticed to the public... **Vice-Chair Shannon** said this was out of order and asked the Chair to call for a second on his motion.

Director Renee Powell seconded the motion to amend.

Director Piros continued the agenda needs to notify the public that these issues are to be discussed and these are issues that I don't feel able to discuss tonight in a thoughtful way or to do good work on it. I feel like this is being pushed through and previously, if we had done this, you would have been very upset about us not being very transparent.

Vice-Chair Shannon responded that he attempted to be transparent and get these items on the agenda by following proper procedures but was thwarted, but I want to discuss these things and I'm not going to be stopped by one member abusing their power over the agenda.

Director Penner clarified that Director Shannon sent an email and was told that one Board member cannot demand to have items added to the agenda - that is something to be decided as a Board. The proper procedure is to bring the item up during the Future Agenda Items section at the end of the meeting so the Board may decide and then it will be added to a future agenda. She agreed the discussions are important and need to happen, but not without giving notice to allow staff and Board members time to prepare.

Director Peña added these are topics of great importance to the community who will want to give their public comment as seen in the past and we want to hear from our constituents.

Vice-Chair Shannon said he did want to hear from constituents and these items are just for discussion and he quoted the Newberg School District Policy BDDC – Board Meeting Agenda (see District’s website for the complete [policy](#)).

Chair Brown reminded everyone to speak through the Chair for the remainder of the meeting.

VOTE on MOTION 4: To reopen the discussion of the Agenda.

Motion passed: 4 Yes [Brown, DeHart, Powell, Shannon]- 3 No [Penner, Peña, Piros]

VOTE on MOTION 5: To amend the Agenda and add discussions on BLM signs in District facilities, the Anti-Racism Resolution, and Policy ACB to tonight’s agenda after New Business.

Motion passed: 4 Yes [Brown, DeHart, Powell, Shannon]- 3 No [Penner, Peña, Piros]

VII. PUBLIC COMMENT

43min:05sec

Chair Brown gave statements regarding public comment procedure. Public comment was given as follows:

Resident Brandon Casey congratulated the new members, offered positive support for Chair Brown’s character and his stand on the anti-racist bill, and said the anti-racist bill needs to be thrown out. He cited a study on children and the harmful effects of masks from the Journal of American Medical Associations (see official meeting record for referenced [study](#)).

Resident Marie Sellke spoke of transparency in Newberg School District decision making about masks and block scheduling. She spoke in favor of recommending masks over mandating.

Newberg Mayor Rick Rogers thanked the previous board members for their service and welcomed the new board members. He spoke of the community, asked the Board to remember their decisions are not made in a silo and encouraged a welcoming approach to help our community prosper.

Resident Robyn Wheatley provided reasons she is opposed to requiring kids to wear masks and asked the Board to vote against requiring them and against medical discrimination for vaccine status.

Resident Brianna Dodson asked about the Board’s plans for lifting mask mandates and making masks optional for the fall like other districts have done and gave reasons why she is opposed to children wearing masks.

Resident Zephyr Bizeau shared his thoughts and several references for why kids should not be wearing masks when they return to school in the fall (see official meeting record for sources cited on video recording).

Resident Melissa Tindall shared why she hoped masks for children would be optional, not mandated.

VIII. BOARD AND SUPERINTENDENT COMMENTS

1hr:12min:02sec

a. Board Comments

Chair Brown reminded board members of their operating agreement and to refrain from personal or character attacks.

Director DeHart thanked the directors and staff attending and shared his experience so far joining the Board. He sees the history, hard feelings, and concerns in emails and prays we can heal the hurts and come together to find solutions for kids, parents, teachers, schools, and community.

Director Powell offered thanks for help, support, and prayers from others and said she looks forward to serving and building positive and productive relationships with all. She assured all parents and children their voices will be heard and said when working together can accomplish great things for our children and schools.

Director Penner welcomed new members, spoke of her experience on the board, and hope of collaboration. She spoke of the recent inundation in board communications and mentioned 96 emails were received sharing perspectives on the District's efforts to ensure all students feel safe and that they belong with 87% in support. She read one of the emails from a student that she felt was impactful (see official meeting record for referenced emails).

Director Peña welcomed the new directors, thanked supporters in her reelection, shared her experience on the Board and desires to not be personally attacked or have hate towards her as she tries to represent the often unheard and unseen part of the community.

Director Shannon welcomed the new members to the Board and congratulated Director Brown for his election as Chair. He said Chair Brown will do an excellent job fairly administering the meetings and centering this team on what is best for students.

Director Piros congratulated and welcomed the new members, said she looked forward to working with Chair Brown and Vice-Chair Shannon and doing all she can to serve the students, staff, and community she was elected to serve. She also thanked all those that wrote in regarding the chair selections and those that supported her.

Chair Brown maybe through a tough meeting our differences could be our strength and our challenges can bring us together rather than focusing on perceived weaknesses. He encouraged the Board to think about the unique skills and perspectives to unify them before they come together for the board retreat.

b. Superintendent Comments

Superintendent Morelock welcomed the new members and Director Peña's continuation on the board, and thanked all the public commenters. He acknowledged the high interest of masks, different opinions, and next steps. He reflected back on what several members said tonight being off to a rough start and encouraged all to pull back and focus on civility, remembering kids are watching and student representatives will be on the Board this year. He spoke of the need to support all kids and that diverse opinions make the best decisions.

IX. CONSENT AGENDA

The consent agenda included minutes for approval from the June 22, 2021 Board meeting, donations, and personnel items (see board packet for full report).

MOTION 6: Brian Shannon/Rebecca Piros moved that the Newberg School District Board of Directors approve the consent agenda as presented.

Motion passed: 7 Yes- 0 No

Chair Brown read and acknowledged all donations.

X. REPORTS AND PRESENTATIONS

1hr:26min:57sec

a. Ready Learners Safe Schools Update

Superintendent Joe Morelock and **Assistant Superintendent Derek Brown** provided an update from the Oregon Department of Education (ODE) regarding the new Ready Schools Safe Learners Resiliency Framework for the 2021-22 School Year released on June 25, 2021 including Guidance for COVID-19 Prevention in Kindergarten (K)-12 Schools, an Order from the Centers for Disease Control and Prevention Department of Health and Human Services, and a slideshow on the 2021-2022 School Opening Plan for the Newberg School District (see board packet & official meeting record for full report). In order to prepare for decisions that may need bring forth a plan by the next meeting, they polled the Board to see where they stand with addressing masks and vaccinations.

Director Piros thought rather than mandating vaccines and masks they could allow choice and have people sign a liability waiver to take on the risk.

Director Penner agreed with Director Piros' solution and added she would really like to hear from staff, teachers, and principals who will be in the buildings with unmasked and unvaccinated people. She would also like to see more research about a liability waiver.

Director Powell agreed it should be a choice with a signed consent so no liability with the schools. She said masks and vaccines are a choice and should not be mandated and that it is a health privacy act violation to even ask. **Superintendent Morelock** asked her to clarify if it was a violation to ask staff or students. **Director Powell** replied we should not be asking students their vaccination status or having teachers condemning kids for their choice to vaccinate or wear masks or not. She said she heard from parents in certain schools that teachers are already not bullying, but ostracizing kids that don't want to wear masks to the point they come home crying.

Vice-Chair Shannon asked questions about the metrics being tracked to decide when it is okay to lift the mask mandates. He is concerned with delaying the decision as parents start to look for other accommodations for next year if have to wear masks. He wishes to make a motion to lift the mask mandates and revisit if needed.

MOTION 7: Brian Shannon/Renee Powell moved that the Newberg School District lift the face mask mandate in district facilities.

Director Peña asked why the Board is moving so quickly to vote on this when not all of the Board members have given their opinion yet. **Chair Brown** tabled the motion until the rest of the directors' opinions are heard.

Director Peña shared she dislikes masks too but safety is her top concern since she got COVID as a part of the essential workforce which impacted her family in so many ways. She a signed waiver would be needed if folks don't want to wear masks but if we are asking our educators to put themselves on the line we need to ask their opinion and we need to figure out how we are keeping our students and employees safe because kids are super spreaders.

Assistant Superintendent Derek Brown asked for a clarification of the motion on the table and if that includes lifting the mask mandates for active summer school going on right now.

Director DeHart asked about the waiver being discussed. **Superintendent Morelock** discussed different policies for various vaccination requirements, that it is not a HIPPA violation to ask our employees for vaccination status, and the waiver would be signed to release the District of liability and assuming that risk on your own if you choose not to get vaccinated. The same goes could go for parents choosing to send their children to school either unvaccinated or unmasked to sign a waiver to acknowledge the risk of going against recommendations for safety and releasing the District of liability if they get COVID. He noted the District's insurance carrier does not have any coverage for the coronavirus so we need to figure out what our liability is and our comfort level of the risk. **Director DeHart** continued by discussing his research on masks and younger kids being twice more likely to die of flu than COVID19 and asked if we ever asked to sign waivers for other vaccinations. **Superintendent Morelock** replied we have not for those diseases, this is new and different and it is interesting to see the liability insurance carriers go back and forth on this. **Director DeHart** concluded that he would prefer to make masks optional and really press education for hand-washing and awareness. He does not think the District should mandate it based on conflicting evidence. **Superintendent Morelock** said they are always tracking metrics, especially since this is a respiratory disease, and if it is a choice then some will wear and some won't and there will be a similar amount of folks look for options and maybe choose to not send their kids to school either way.

Chair Brown asked about the dates for summer school. **Assistant Superintendent Derek Brown** replied there are two more weeks to go and there is also C.A.R.E. through CPRD throughout the summer. **Chair Brown** said the public seems to want us to go back to no masks and he would like to see it as an option. Parents should still have a choice with everything and he doesn't want to see kids or staff treated differently based on their choices. He would like to see more information on the liability. He wondered if the rules were different for staff than students. **Superintendent Morelock** replied that some employers are requiring vaccines to return to work, but we would need to check in with labor associations. The Board will need to decide if they wish to require staff to mask or not as well.

MOTION 8: Brian Shannon/Trevor DeHart moved to amend the motion lift the face mask mandate in district facilities to be effective on the first day of school for the 2021-22 school year.

Vice-Chair Shannon said the amendment would be to allow staff to conduct more research on liability issues.

Director Piros asked if this if for all staff and students. **Vice-Chair Shannon** said it would be for everybody.

Director Penner stated her intent to abstain from the vote because she does not feel like she has enough information to say yes or no at this point. She doesn't know what staff would prefer and the Board only heard from 10-12 parents which is not representative of our thousands of families in the District.

Director Piros asked for the Superintendent's opinion. **Superintendent Morelock** noted the challenge and his tendency to be more protective of the people in his charge and he has been very cautious about this because we still do not know enough. He appreciates the amendment to allow more time to watch data and gather information. The District has had some small shutdowns and he is concerned with the long-haul COVID effects on people. The District has work to do on liability part of this and insurance to keep us safe from lawsuits.

Director Peña asked to clarify if lifting the mandate in schools will the law requiring masks on busses still be in effect. Staff replied that masks will still be required on busses by law.

Chair Brown spoke of mental health issues and learning process being weakened by wearing masks. With the amendment we have time and if we get towards the end of August and things took a turn then we could have an emergency meeting and switch directions to protect the kids.

VOTE on MOTION 8: To amend the motion lift the face mask mandate in district facilities to be effective on the first day of school for the 2021-22 school year.

Motion passed: 5 Yes- 0 No- 2 Abstain [Brandy Penner, Ines Peña]

VOTE on Amended MOTION 7: To lift the face mask mandate in district facilities, effective on the first day of school for the 2021-22 school year.

Motion passed: 5 Yes- 0 No- 2 Abstain [Brandy Penner, Ines Peña]

Chair Brown called for a break for five minutes at 9:17 pm and reconvened at 9:23 pm.

XI. OLD BUSINESS 2hr:28min:04sec

a. Finalize the Board Retreat Plan – continued

Chair Brown discussed the two best dates for the Board Retreat and decided on August 24 from 6:00-10:00 pm Attendance will be in-person in the Board Room at the District Office with technology set up for virtual attendance for those Board members that cannot attend in person.

XII. NEW BUSINESS 2hr:34min:40sec

a. Designate Signatories for Buildings

Nikki Fowler, Director of Operations & Finance, provided updates as to who is allowed to sign on the Columbia Bank and Wells Fargo Bank accounts at the individual building level and presented two attachments show who continues to be able to sign, who must be removed, and who must be added in each building (see board packet for full report).

MOTION 9: **Brian Shannon/Rebecca Piros** moved that the Newberg School District Board of Directors approve and designate the depository signatures for fiscal years 2021-22 as listed.

Motion passed: 7 Yes- 0 No

b. Resolution 2021-01: Authorizing Deposit and Withdrawal of Funds

Nikki Fowler, Director of Operations & Finance, presented and recommended adoption of Resolution 2021-01 to establish depositories and set a borrowing limit for the deputy clerk (see board packet for full report).

MOTION 10: **Brandy Penner/Rebecca Piros** moved that the Newberg School District Board of Directors adopt Resolution 2021-01: A Resolution Authorizing Deposit, Withdrawal, and Borrowing of Funds, by title only.

Motion passed: 7 Yes- 0 No

c. Resolution 2021-02: Authorizing Deposit and Withdrawal of Funds

Nikki Fowler, Director of Operations & Finance, presented and recommended adoption of Resolution 2021-02 for the deposit and withdrawal of funds for the Local Government Investment Pool (see board packet for full report).

MOTION 11: Brian Shannon/Rebecca Piros moved that the Newberg School District Board of Directors adopt Resolution 2021-02: A Resolution Authorizing Deposit and Withdrawal of Funds, by title only.

Motion passed: 7 Yes- 0 No

d. Resolution 2021-03: Designating Auditors and Counsel

Nikki Fowler, Director of Operations & Finance, presented and recommended adoption of Resolution 2021-03 to designated the school district appointments, financial auditors, and legal counsel for the 2021-22 school year (see board packet for full report).

MOTION 12: Brandy Penner/Brian Shannon moved that the Newberg School District Board of Directors adopt Resolution 2021-03: A Resolution Establishing Designated School District Appointments, Financial Auditors, and Legal Counsel, by title only.

Motion passed: 7 Yes- 0 No

ADDITIONAL NEW BUSINESS

2hr:41min:45sec

a. BLM signs/"Pride" flags in District facilities

Director Shannon said he would like to address the posting of Black Lives Matter (BLM) and pride flag displays in district facilities. He feels they are inherently political symbols and posting them in a taxpayer funded facility equates to indoctrination of students into certain ideological beliefs which is not appropriate and we need to refocus our district on education not indoctrination.

MOTION 13: Brian Shannon/Renee Powell moved that the Newberg Dundee School District Board of Directors direct the Superintendent to remove all Black Lives Matter (a.k.a. BLM) signs, flags, placards, and all instances of the symbol known as the Pride flag from district facilities immediately and direct the policy committee to draft policy language prohibiting the display of political signs, flags, and placards, in district facilities with the sole exception of the American flag and the Oregon state flag.

Director Penner said she believed the Board needs to table this item as we are over schedule and these are heavy topics that deserve our full attention.

MOTION 14: Brandy Penner/Rebecca Piros moved to table the motion.

Director Piros agreed the item needed to be tabled to allow constituents to give input, so staff can determine if we can legally do this, and so the Board may consider this more thoughtfully.

Director Peña said the Board already received a ton of emails about this with the majority supporting the principal that supported students and faculty expressing themselves and feel welcome. She would love to hear more if those emails were not enough (see official meeting record for the June 22, 2021 Board meeting for referenced communications).

Director Powell said she would like to hear more from community and she heard concerns from parents from other side that children are scared with flags in classroom because they have police officer in their

families and this represents a different thing for different sides. If we want to make all safe and welcome then we have to for everybody on both sides. It would be good to hear from everyone, staff, parents, and kids.

Director DeHart agreed and said these symbols or political or social movements are not black and white, they're gray and we need to discuss if there is a happy medium. Asked if the motion is saying as a government entity we shouldn't be supporting one cause over another or are we saying that kids cannot express themselves.

Vice-Chair Shannon said he is for students to wear what clothes they want, to express themselves, but there is a big difference between that and government paid employees using that public trust to instill their own political values and morals and that crosses the line to propagandizing.

Chair Brown said it is a tough issue and that we keep losing focus on the public charge to be a school and educate our kids. Some of these things are important to some and it has divided us. Agreed on tabling.

VOTE on MOTION 14: To table the motion to direct the Superintendent to remove all Black Lives Matter (a.k.a. BLM) signs, flags, placards, and all instances of the symbol known as the Pride flag from district facilities immediately and direct the policy committee to draft policy language prohibiting the display of political signs, flags, and placards, in district facilities with the sole exception of the American flag and the Oregon state flag to August 10, 2021.

Motion passed: 7 Yes- 0 No

b. The District's Anti-Racism Resolution

Vice-Chair Shannon said he wished to address the anti-racism resolution that was passed last year during a tumultuous time and we adopted boilerplate language given to us by the Oregon School Boards Association (OSBA) (see District website for complete resolution and video recording from December 8, 2020). Now that things have calmed down and we've heard a lot from our community about it, it had some language in there that concerned a lot of people.

MOTION 15: **Brian Shannon/Renee Powell** moved that the Newberg Dundee School District Board of Directors to direct the policy committee to draft replacement language for the Anti-Racism Resolution 2020-04.

Board Secretary Jennifer Nelson informed the Chair of a procedural need to table all decisions on the three items added to the agenda this evening to allow for proper notification to the public according to public meeting laws. It was also noted that Spanish interpreters were only contracted until 10:00 pm.

Director Piros also noted that the Board does not have a Policy Committee established yet for these items to be referred to.

MOTION 16: **Dave Brown/Trevor DeHart** moved to table the motion to the August 10, 2021 Board meeting.

Motion passed: 7 Yes- 0 No

c. Policy ACB – All Students Belong

Vice-Chair Shannon said he would like to discuss Newberg School District Policy ACB (All Students Belong) which was passed outside of the normal order of business and in contravention of our rules last December. He urged everyone to look at the video of how that went because members were not allowed to propose amendments, the vote normal order of business per Roberts rules was not followed, a vote was not taken to end discussion, so it was illegally passed. So at the next meeting he will be moving to rescind the policy ACB and refer it back to the policy committee for further review.

Chair Brown tabled the discussion to the next meeting as no motion was formally made.

XIII. FUTURE AGENDA ITEMS

The next meeting will be August 10, 2021, at 7:00 pm.

XIV. ADJOURNMENT

No further matters appearing to come before the Board, **Chair Brown** adjourned the meeting at 9:56 pm.

ATTEST:



Superintendent

APPROVED:



Board Chair



Aruna Masih
direct: 503.546.9636
aruna@bennethartman.com

Robert A. Bennett (1931-2018)
Thomas K. Doyle ^{WA} *
Nelson R. Hall
Gregory A. Hartman [†]
Dylan P. Jensen
Henry J. Kaplan ^{NY}
Linda J. Larkin [§]
Aruna A. Masih ^{WA}
Michael J. Morris [§]
Richard B. Myers ^{WA}
Margaret S. Olney ^{WA}

* special counsel
[†] retired
[§] of counsel

August 22, 2021

Via Email browndav@newberg.k12.or.us
& Certified Mail RRR
Board Chair Dave Brown
Newberg School District 29J
714 East 6th St
Newberg, Oregon 97132

Via Email morelockj@newberg.k12.or.us
& Certified Mail RRR
Superintendent Dr. Joseph Morelock
Newberg School District 29J
714 East 6th St
Newberg, OR 97132

Re: Tort Claims Notice – Board Action August 10, 2021
Our File No. 5407-00

Dear Board Chair Brown & Superintendent Morelock:

The purpose of this letter is to comply with the requirements of ORS 30.275 to provide the Newberg School District notice of the intent of Newberg Education Association and its members—such as President Jennifer Schneider—to proceed with claims for damages and declaratory and injunctive relief related to the [School District's August 10, 2021, directive](#) to the Superintendent:

“to remove all Black Lives Matter (a.k.a. BLM) signs, flags, placards, apparel, buttons and all other modes of display in all instances of the symbol known as the Pride flag from district facilities immediately and direct the policy committee to draft policy language prohibiting the display of political signs, flags, apparel, buttons, placards and all other modes of display from district facilities with the sole exception of the American flag and Oregon state flag with exemptions as it sees proper.”

In addition, based on the [Board packet from the August 10, 2021](#), it appears that the School Board also intends to rescind Policy ACB-All Students Belong and refer that policy and Anti-Racism Resolution 2020-04 back to the policy committee for re-drafting. Finally, at the August 10th meeting, at least some of the School Board members also indicated an intent to authorize violations of the state-wide mask mandate and explore use of public funds to pay fines and penalties arising out of those intentional violations and to avoid personal liability for the policy and practice of the Board leading to unsafe working conditions and potential injury to Association members.

When the Board meets in executive session to consult with its counsel on August 24, 2021, the Association requests that the Board address the following concerns of Association members.

- The [Oregon Department of Education](#) (ODE) and [all major organizations](#) involved in the education and welfare of students in our state have recognized the importance of anti-racism and support of Black Lives Matter. In response to a [student-led effort](#), the ODE also adopted the [Every Student Belongs rule \(OAR 581-022-2312\)](#). In addition to providing a [toolkit](#) to assist districts to implement the rule. The ODE has provided [resources](#) regarding how educators can engage in educational conversations regarding BLM and create safe spaces for LGBTQIA+ students. As the ODE Resolution makes clear, speaking out against racism and in support of Black Lives is not a matter implicating “political” activity prohibited by the Federal or State Hatch Acts.
- In addition, prior cases make clear that public school districts must not engage in “viewpoint discrimination” or a “prior restraint” of speech based on presumptions of “inherent disruption” of speech. *See e.g., Eagle Point Education Association v. Jackson County School District No. 9*, 880 F3d 1097 (9th Cir 2018) and *Chandler v. McMinnville School District*, 978 F2d 524 (9th Cir 1982). Moreover, to the extent evidence of disruption exists restrictions must be narrowly tailored to survive constitutional scrutiny. The Board’s August 10th directive and impending actions fail to meet these tests for constitutionality.
- Furthermore, to the extent Association members are using posters, signs, pins, and apparel provided by the Association as part of mutual aid and concerted activity to uphold the safety of their members who may be the subject of discrimination or harassment based on their race and/or LGBTQIA+ status, the activity is further protected under the provisions of the Public Employee Collective Bargaining Act (PECBA)(ORS 243.650 to 243.782 *et seq.*), and the School Board’s actions interfering in such activity would be an unfair labor practice. *See e.g. Laborers’ International Union of North America Local 483 v. Metro*, 2016 WL 1391620 (March 23, 2016)(finding that Metro’s ban of certain union buttons constituted an unfair labor practice). They may also violate Article 5.C.1, Article 9.E, Article 11, and Article 20.1 of the District’s existing collective bargaining agreement with the Association.
- Finally, the attempt by some members of the School Board to authorize violations of ODE rule and/or Governor’s state-wide mask mandate is not only contrary to the ORS 332.005 oath of office but also could implicate the crime of Official Misconduct (ORS 162.405 and 162.415) and be deemed “malfeasance in office or willful or wanton neglect of duty” to nullify defense and indemnification under ORS 30.285 (2) and ORS 30.287(1). Where a public official has been found to engage in “official misconduct” and a “breach of fiduciary duty” to the public, the Oregon Supreme Court has allowed even the recovery of punitive damages. *See e.g. Lane County v. Wood*, 298 Or 191, 691 P2d 473 (1984). Most

Tort Claims Notice Letter

August 23, 2021

Page 3 of 3

importantly, the course of action in conflict with State law, rule, and/or policy, places in jeopardy the teaching license of every teacher in the school district potentially impacting the delivery of educational services to all students.

The above factors provide the Board with more than sufficient legal support to rescind its problematic, August 10, 2021, directive and to retain existing resolutions, policies, and past practice authorizing Association members to display BLM and LGBTQIA+ signs, flags, buttons and apparel and to comply with ODE rules and/or other state-wide mandates. Unless we hear back from the District within 14 days of this letter that the District intends to rescind its directive and comply with state rules and laws, we will proceed with legal action. We hope the Board will take this opportunity to ensure that its staff and students are safe in schools and can engage with these important issues in ways that educate, inspire growth, and achieve equitable change that benefits the most vulnerable.

If there are any questions regarding this request, do not hesitate to have legal counsel contact me.

Best regards,

BENNETT HARTMAN, LLP

A handwritten signature in blue ink, appearing to read 'Aruna A. Masih', with a long horizontal line extending to the right.

Aruna A. Masih

Cc: School Board (via email boardmembers@newberg.k12.or.us)
Karen Vickers (via email kvickers@vickersplass.com)
Jennifer Schneider
Adam Arms



SEPTEMBER 9, 2021

POLICY COMMITTEE MEETING 1:00 PM



**NEWBERG SCHOOL DISTRICT 29J
BOARD OF DIRECTORS
POLICY COMMITTEE**

Newberg School District 29J • September 9, 2021
Policy Committee of the Board of Directors • 1:00 PM

The Policy Committee of the Board of Directors of the Newberg School District 29J will meet on **Thursday, September 9, 2021 at 1:00 pm**, via Zoom conference call to discuss a policy on ensuring a safe environment to learn and develop a recommendation to present in a first read to the Board at their September 14, 2021, regular meeting. Discussion items may include the following:

- I. Call to Order 1:00 pm
- II. Ensuring Safe Environments to Learn Policy..... 1:00 pm
- III. Adjourn..... 2:30 pm

To listen to the meeting, call one of these numbers and follow the prompts:

1-253-215-8782 or 1-301-715-8592 **Meeting ID: 896 5466 3335; Passcode: 579557**

Or login via Zoom, using Meeting ID: 896 5466 3335; Password: 579557

<https://us02web.zoom.us/j/89654663335?pwd=R20wNHhNcUJkZGJOL2JyQ3lhQkxXUT09>

Newberg School District is an equal opportunity educator and employer.

*Persons having questions about or requests for special needs and accommodations should contact the Board Secretary;
Phone: 503-554-5036; or the Newberg School District Business Office, 714 East Sixth Street, Newberg, Oregon, 503-554-5000.*

Posted: September 8, 2021

ENSURING SAFE ENVIRONMENTS TO LEARN

The following includes some of the existing law and policy reasons for this policy but shall not be a part of the text of the actual policy:

WHEREAS

- District Policies INCA, KJA, and ORS 260.432 already prohibit district employees from promoting candidates, ballot measures, elections, political committees, political matters, and distribution of inappropriate materials while on the job during working hours; and
- Students and classrooms should be safe and free from bias, intimidation, coercion, and a place where students can feel free to express themselves without fear of retaliation; and
- District Policy IB protects students' free speech, freedom of expression, and free assembly and such rights should be protected in the school facilities without coercion or political or quasi political indoctrination from district employees; and
- District employees are given a valuable and critical position of trust to protect and promote every child's education regardless of that child's interests, beliefs, political or quasi political positions; and
- District policy GBC explains that all district employees have been hired for the primary mission of educating all students; and
- While performing their roles as teachers or District employees, all District staff is speaking on behalf of the school district; and
- Controversial topics change periodically but displays expressing support or opposition on those topics from district employees while in their official roles, particularly classroom teachers, can cause the same fear, intimidation, and chilling of free speech to children from every perspective and therefore should be addressed with a uniform District policy; and
- The District is entitled to take legitimate and appropriate steps to ensure that its educational message and educational mission is neither garbled nor distorted, particularly with respect to keeping students free to learn and explore the established curriculum, and be free from undue influence, fear, or intimidation that may be manifested by political, quasi-political, or controversial displays by District Staff in their classroom, or other area of employment; and

THEREFORE, the text of District Policy GBC shall be amended by adding the following text:

Ensuring Safe Environments to Learn

No district employee shall, while acting within the scope of their employment, either during school hours, or inside their physical area of responsibility at a school (such as a classroom, meeting room, desk area) hang, post, erect, or otherwise display (hereafter “display”) any posters, signs, flags, banners, pictures or other digital or physical image that depicts support or opposition relating to a political, quasi-political, or controversial topic.

For purposes of this policy a controversial topic shall be defined as one that a professional educator could reasonably understand to have students on more than one side of said issue. For purposes of this policy a political or quasi-political topic includes contemporary issues being debated in the local, state or national political climate.

Any person concerned with a particular Display should first notify the District employee believed to be responsible for the Display. Alternatively, the concerned person may anonymously file a complaint with a supervisor, school principal or the principal’s designee pursuant to District Policy.

Notes and Exceptions:

- * This policy does not restrict in any way students’ First Amendment rights, nor change Policy IB or IGAC.
- * This policy does not restrict in any way District employees First Amendment rights when not speaking in their official capacity, nor while not on the job or if they are not using a forum provided exclusively to them as an employee, or otherwise speaking on behalf of the District.
- * This policy does not limit, nor apply to communications, nor the free exchange of ideas during the course of approved educational events or exploration of approved curriculum.
- * Official district billboards in school offices, and union materials covered by collective bargaining agreements and are expressly exempt from this policy.
- * The flags of the United States of America and the State of Oregon are not prohibited by this policy.

OSBA Model Sample Policy

Code: GBG
Adopted:

Staff Participation in Political Activities

Employees may exercise their right to participate fully in affairs of public interest on a local, county, state and national level on the same basis as any community member in a comparable position in public or private employment and within the law.

All district employees are privileged within the limitations imposed by state and federal laws and regulations to choose any side of a particular issue and to support their viewpoints as they desire by vote, discussion or persuading others. Such discussion and persuasion, however, will not be carried on during the performance of district duties, except in open discussion during classroom lessons that consider various candidates for a particular office or various sides of a particular political or civil issue.

On all controversial issues, employees must designate that the viewpoints they represent on the issues are personal and are not to be interpreted as the district's official viewpoint.

No employee will use district facilities, equipment or supplies in connection with his/her political activities, nor will he/she use any time during the work day for such political activities.

END OF POLICY

Legal Reference(s):

[ORS Chapter 244](#)

[ORS 260.432](#)

OR. CONST., art. XV, § 8.



Resolution Encouraging Solidarity and Support for Student Identities

WHEREAS, Oregon state law requires school districts to provide a free appropriate public education to all children between the ages of 5 and 19 who reside within the district (ORS 339.115); and

WHEREAS, public schools and school districts in Oregon are subject to all federal and state laws and constitutional provisions prohibiting discrimination; and

WHEREAS, the Oregon State Board of Education promotes nondiscrimination and an environment free of harassment based on an individual's race, color, religion, sex, sexual orientation, gender identity or expression, national origin, marital status, age or disability; and

WHEREAS, the Oregon Legislature has determined that a person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly; and

WHEREAS, it is the policy of the Oregon State Board of Education that all students, employees, and visitors in public schools are entitled to learn, work, and participate in an environment that is safe and free from discrimination, harassment, and intimidation.

WHEREAS, the Oregon State Board of Education's mission is to provide leadership and vision for Oregon's schools and districts by enacting policies and promoting educational practices that lead directly to the educational and life success of all Oregon PK - 12 students; and

WHEREAS, the Oregon State Board of Education reaffirms its commitment to equity and access to education as a core value,

manifested by a steadfast commitment to creating a welcoming environment for all students and families and direction of the supports and resources needed to eliminate barriers and promote student success; and

WHEREAS, the Oregon State Board of Education is committed to ensuring in words and actions that every student has access to the resources and supports they need to thrive in school; and that [Every Student Belongs](#); and

WHEREAS, signs, flags, placards, and symbols showing solidarity with those who have shown incredible resilience in the face of institutional and systemic underrepresentation and minoritization can help contribute to a sense of safety and belonging in school settings; and

WHEREAS, the U.S. Office of Special Counsel issued an [advisory opinion](#) that it is not a violation of the Hatch Act for federal employees to show support for the Black Lives Matter movement and the Black Lives Matter Global Network while on duty, including wearing or displaying materials related to the cause, because they address issues such as racism, which are not inherently aligned with a single political party; and

WHEREAS, in believing that silence and inaction allow racism to remain prevalent in our schools, the Oregon State Board of Education [formally declared in 2020](#) that “Black Lives Matter” in order to reinforce that the lives of Black educators, staff, students, and everyone in school communities are just as valuable as anyone else’s life; and that Black students matter and belong in our classrooms, just like all other students; and

WHEREAS, the Oregon State Board of Education has adopted an [LGBTQ2SIA+ Student Success Plan](#) to address barriers to educational success for Oregonian students who identify as lesbian, gay, bisexual, non-binary, transgender, gender queer, two-spirit, intersex, asexual (+) and establish a framework for creating safe, inclusive and welcoming schools for LGBTQ2SIA+ students and families, and

WHEREAS, we recognize that there are people who hold power in education, including on school boards in Oregon, who have taken action or are considering action to limit staff from displaying symbols and signs celebrating student identity and fostering safe and welcoming spaces for students; instead labeling student identity as controversial and divisive; and

WHEREAS, we recognize that there are people who hold power in education, including on school boards in Oregon, who have taken action or are considering action to limit the display of signs, flags, placards, and symbols conveying that Black Lives Matter and showing solidarity and safety for LGBTQ2SIA+ students, families, and employees; in opposition to their communities, colleagues, and the values of the Oregon State Board of Education.

THEREFORE BE IT RESOLVED that the Oregon State Board of Education:

- (1) Renews its commitment to anti-racism, equity, student belonging, and access to education as a core value, manifested by a steadfast commitment to creating a welcoming environment for all students and families and direction of the supports and resources needed to eliminate barriers and promote student success; and
- (2) Urgently requests that all Oregon school districts, public charter schools, and education service districts affirm that “Black Lives Matter” by striving to make space in classrooms and within the school community for dialogue and support for issues of race and equity; and
- (3) Urgently requests that Oregon school districts, public charter schools, and education service districts validate that “Black Lives Matter” through resolutions consistent with this Resolution; and
- (4) Urgently requests that Oregon school districts, public charter schools, and education service districts support educators and others who are making a special effort to let Black students and families know that they belong and are valued members of the school community; and
- (5) Urgently requests that Oregon school districts, public charter schools, and education service districts both protect and encourage the proactive creation of safe spaces for LGBTQ2SIA+ students, staff and families through use of symbolism of pride and affirmation across gender identities and sexual orientations, as well as additional supportive measures beyond symbolism; and
- (6) Urgently requests that Oregon school districts, public charter schools, and education service districts communicate to students, families, employees, and their communities their policies and practices

and their commitment to providing all students with a high quality public education regardless of race, color, religion, sex, sexual orientation, gender identity or expression, national origin, marital status, age or disability; and

(7) Fully supports all efforts by Oregon school districts, public charter schools, and education service districts to ensure the safety and well-being of all students, regardless of national origin, immigration status, or documentation status by adopting local resolutions consistent with this resolution; and

(8) Fully supports all efforts by the Oregon Department of Education, Oregon school districts, public charter schools, education service districts, and educational leaders to create and nurture an inclusive and welcoming environment for all students, families, and employees, in which [Every Student Belongs](#); and

(9) Calls on the Newberg School Board to reverse course on its clear and continuous effort "...to remove all Black Lives Matter (aka BLM) signs, flags, and placards, apparel, buttons, and all other modes of display, and all instances of the symbol known as the Pride Flag from District facilities," and to validate that student identities are not inherently political or controversial, but welcomed and affirmed; and

(10) Further calls on the Newberg School Board to encourage district staff to celebrate and stand in solidarity with students through the use of signs, flags, placards and symbols, and affirm in words, policy and action that [Every Student Belongs](#) and is welcome, appreciated and ensured an equitable access to a high quality education in Newberg Public Schools regardless of race, color, religion, sex, sexual orientation, gender identity or expression, national origin, native language, immigration status, documentation status, marital status, age or disability.



SEPTEMBER 28, 2021

BOARD OF DIRECTORS

REGULAR MEETING

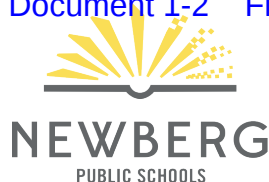
7:00 PM

WORK SESSION

8:00 PM

Newberg School District Board Room · 714 E 6th St. · Newberg, Oregon 97132

Ex 12, Page 1 of 7



Newberg School District 29J • September 28, 2021

Regular Board Meeting • 7:00 PM Work Session • 8:00 PM

The Board of Directors of the Newberg School District 29J will meet on Tuesday, September 28, 2021 at 7:00 pm for a Regular Board Meeting and at 8:00 pm for a Work Session via Zoom conference call to discuss or take action on minutes, policy, and other business items. No public comments will be received. Business and discussion items may include:

- I. Call to Order 7:00 pm
- II. Flag Salute 7:05 pm
- III. Review Agenda (Chair David Brown)..... 7:07 pm
- IV. Old Business
 - a. Rescind Motion 28 and Amend Already Adopted Motion 13 (Vice-Chair Brian Shannon) 7:10 pm
- V. Policy
 - a. Approval of Policy GBG Staff Participation in Political Activities/Ensuring Safe Environments to Learn Policy – Second Read (Vice-Chair Shannon) 7:15 pm
- VI. New Business
 - a. Approve OSBA Nomination to Legislative Policy Committee (Chair Brown) 7:35 pm
 - b. Approve Cell Tower Lease Agreement – Amendment #2 (Nikki Fowler) 7:42 pm
 - c. Approve Amendments to Bank Signatories Designations (Nikki Fowler) 7:50 pm
- VII. Work Session Discussions
 - a. Public Comments Procedure 8:00 pm
 - b. Meetings in October: In-Person or Zoom 8:12 pm
 - c. Pronouns 8:24 pm
 - d. Board Meeting Efficiency..... 8:36 pm
 - e. All Students Are Important..... 8:48 pm
- VIII. Adjourn Regular Session..... 9:00 pm

To listen to the meeting, call one of these numbers and follow the prompts:

1-253-215-8782 or 1-301-715-8592 **Meeting ID: 860 9689 6015; Passcode: 228804**

Or login via Zoom, using Meeting ID: 860 9689 6015; Password: 228804

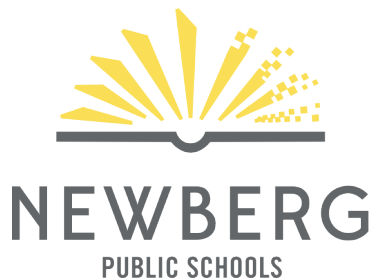
<https://us02web.zoom.us/j/86096896015?pwd=OFo4WHB1Zjh1STFRReW8rMml2dys4UT09>

Newberg School District is an equal opportunity educator and employer.

Persons having questions about or requests for special needs and accommodations should contact the Board Secretary;

Phone: 503-554-5036; Newberg School District, 714 East Sixth Street, Newberg, Oregon.

Posted: September 10, 2021



Newberg School District 29J

Board Meeting Date: September 28, 2021

ITEM: Rescind Motion 28 and Amend Already Adopted Motion 13

PRESENTER: Vice-Chair Brian Shannon

ACTION

BACKGROUND:

At the September 1, 2021 special meeting, the Board tabled Motion 28: To rescind Motion 13 from the August 10, 2021, Board meeting including a directive to the Superintendent to remove all Black Lives Matter (BLM) and Pride displays from District facilities and to refer the political signs ban to the Policy Committee for policy development. Motion 28 was moved by Director Piros and seconded by Brandy Penner.

Motion 29 to table the motion was moved by Vice-Chair Brian Shannon and seconded by Director Trevor DeHart. The reason given for the motion to table was so that the rescinding of the directive to the Superintendent in Motion 13 could be timed with the adoption of the policy developed by the Policy Committee.

By convening the Policy Committee on September 9, 2021, to discuss and recommend Policy GBG to the Board in a first read, the Board already acted on a portion of Motion 13 that states:

"to direct the Policy Committee to draft policy language ~~prohibiting~~ of political signs, flags, apparel, buttons, and placards, and all other modes of display from District facilities, with the sole exception of the American flag and the Oregon state flag, with exemptions as it sees proper. The language contained in this directive shall only apply to District staff and faculty while in the performance of their official duties as District employees"

This action occurred while Motion 28 was still on the table for future decision. To clear up the procedural history for these series of motions and actions by the Board, the Board Secretary recommends the Board to first address the tabled Motion 28 by rescinding it to nullify and remove it from the table. The reason for rescinding Motion 28 rather than amending it is because any amendment to Motion 28 would still require an extra step to amend the previously adopted to Motion 13.

After Motion 28 is cleared from the table, then the Board may make another motion to amend the previously adopted Motion 13 to remove *only* the directive to the Superintendent while allowing the recommended policy language and referral to the policy committee to still stand since that action already occurred. No other language needs to be changed in Motion 13 because the development of the language occurred under the actions and recommendations of the Policy Committee.

Once the procedural items described above are addressed, amended, and cleared from the table the Board may proceed with deliberations and action on the Policy GBG in the second read that resulted from the actions initiated by Motion 13.

Please see the recommended actions and motions below.

RECOMMENDATION:

At the September 28, 2021, Board meeting, the Board Chair opens the previously tabled Motion 28 from September 1, 2021, for discussion so the Board may make the following motions:

MOTION #1: Move that the Newberg School District Board of Directors rescind the tabled Motion 28 to rescind Motion 13 from the August 10, 2021, Board meeting including a directive to the Superintendent to remove all Black Lives Matter (BLM) and Pride displays from District facilities and to refer the political signs ban to the Policy Committee for policy development.

MOTION #2: Move that the Newberg School District Board of Directors amend Motion 13 previously adopted on August 10, 2021, to remove the language "direct the Superintendent to remove all Black Lives Matter (a.k.a. BLM) signs, flags, placards, apparel, buttons, and all other modes of display, and all instances of the symbol known as the Pride flag from District facilities immediately, and" from the motion.



Newberg School District 29J

Board Meeting Date: September 28, 2021

ITEM: Policy GBG: Staff Participation in Political Activities/Ensuring Safe
Environments to Learn (Second Read) ACTION

PRESENTER: Vice-Chair Brian Shannon

BACKGROUND:

The Policy Committee met with Spencer Lewis from Oregon School Board Association (OSBA) on Thursday, September 9, 2021. Amendments were made to OSBS Sample Policy GBG: Staff Participation in Political Activities to include language under the heading “Ensuring Safe Environments to Learn” along with “Notes and Exceptions”. The proposal for the policy has been discussed by the Policy Committee and had a First Read at the September 14, 2021 School Board meeting.

The Policy is attached and presented for approval in the second read.

RECOMMENDATION: Move that the Newberg School District Board of Directors approve Policy GBG: Staff Participation in Political Activities as presented.

Newberg School District 29J

Code: **GBG**

Adopted:

Staff Participation in Political Activities

Employees may exercise their right to participate fully in affairs of public interest on a local, county, state and national level on the same basis as any community member in a comparable position in public or private employment and within the law.

All district employees are privileged within the limitations imposed by state and federal laws and regulations to choose any side of a particular issue and to support their viewpoints as they desire by vote, discussion or persuading others. Such discussion and persuasion, however, will not be carried on during the performance of district duties, except in open discussion during classroom lessons that consider various candidates for a particular office or various sides of a particular political or civil issue.

On all controversial issues, employees must designate that the viewpoints they represent on the issues are personal and are not to be interpreted as the district's official viewpoint.

No employee will use district facilities, equipment or supplies in connection with his/her political activities, nor will he/she use any time during the work day for such political activities.

Ensuring Safe Environments to Learn

No district employee shall, while acting within the scope of their employment, either during school hours, or inside their physical area of responsibility at a school (such as a classroom, meeting room, desk area) hang, post, erect, or otherwise display (hereafter "display") any posters, signs, flags, banners, pictures or other digital or physical image that depicts support or opposition relating to a political, quasi-political, or controversial topic.

For purposes of this policy a controversial topic shall be defined as one that a professional educator could reasonably understand to have students on more than one side of said issue. For purposes of this policy a political or quasi-political topic includes contemporary issues being debated in the local, state or national political climate.

Any person concerned with a particular Display should first notify the District employee believed to be responsible for the Display. Alternatively, the concerned person may file a complaint with a supervisor, school principal or the principal's designee pursuant to District Policy.

Notes and Exceptions:

* This policy does not restrict in any way students' First Amendment rights, nor change Policy IB or IGAC.

* This policy does not restrict in any way District employees First Amendment rights when not speaking in their official capacity, nor while not on the job or if they are not using a forum provided exclusively to

them as an employee, or otherwise speaking on behalf of the District.

* This policy does not limit, nor apply to communications, nor the free exchange of ideas during the course of approved educational events or exploration of approved curriculum.

* Official district billboards in school offices, and union materials covered by collective bargaining agreements and are expressly exempt from this policy.

* The flags of the United States of America and the State of Oregon are not prohibited by this policy.

END OF POLICY

Legal Reference(s):

[ORS Chapter 244](#)

[ORS 260.432](#)

OR. CONST., art. XV, § 8.

Johnson v. Poway Unified Sch. Dist., 658 F.3d 954 (9th Cir. 2011)

Downs v. LA Unified, 228 F.3d 1003 (9th Cir. 2000)